TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 699 27

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

vs.

HELMERICH & PAYNE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 14, 1944
CERTIORARI GRANTED MARCH 27, 1944

United States Circuit Court of Appeals

TENTH CIRCUIT.

No. 2704.

L. METCALFE WALLING, Administrator of the Wage and Hour Division of the United States Department of Labor, APPELLANT,

vs.

HELMERICH & PAYNE, INC., APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA.

FILED FEBRUARY 26, 1943.

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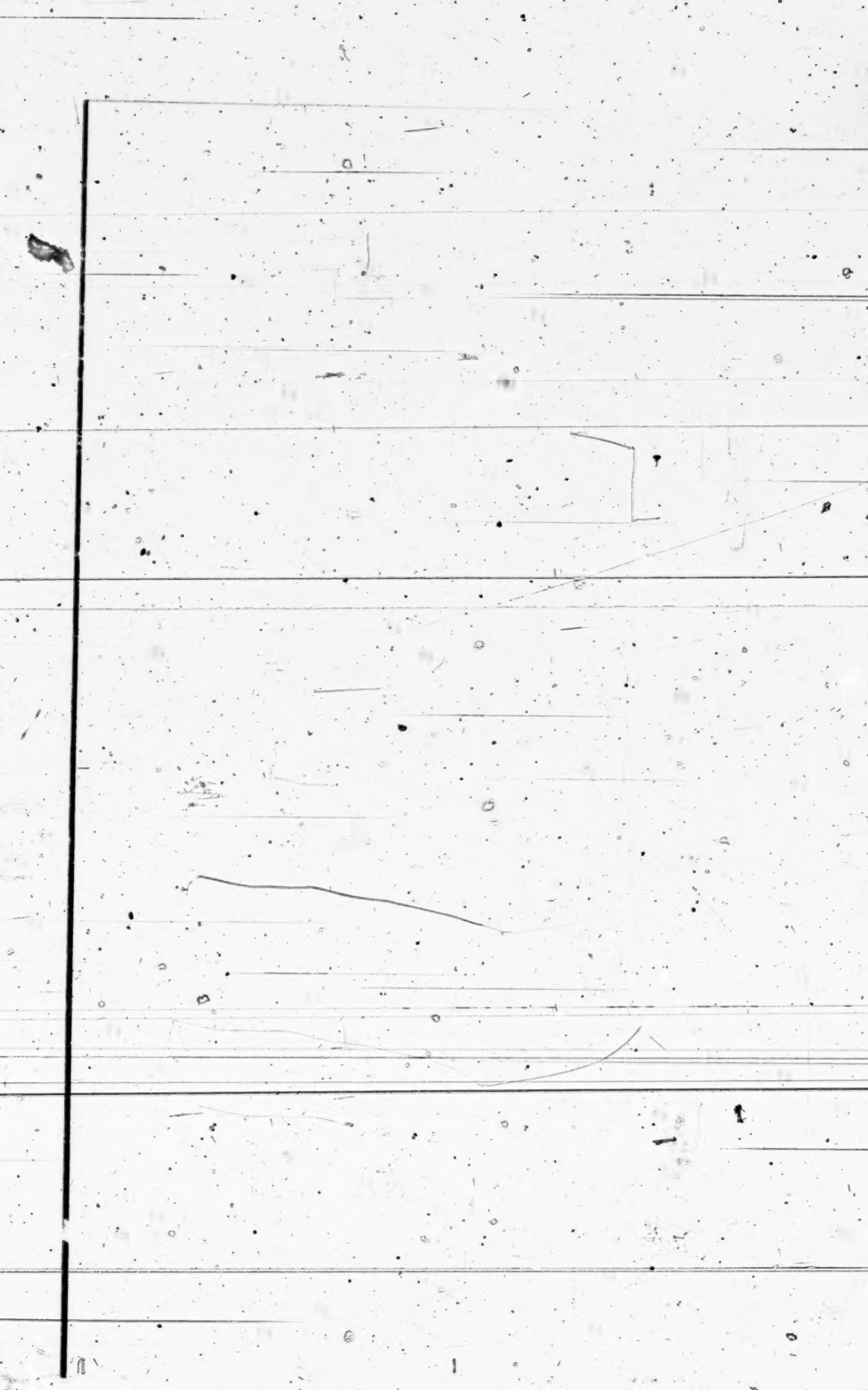
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Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit, at the September term, 1943, of said Court, before Honorable Orie L. Phillips, Honorable Sam G. Bratton, and Honorable Walter A. Huxman, Circuit Judges.

On the 26th day of February A. D. 1943, a transcript of the record, pursuant to a notice of appeal, filed in the District Court of the United States for the Northern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, in a certain cause wherein L. Metcalfe Walling, Administrator of the Wage and Hour Division of the United States Department of Labor, was appellant, and Helmerich & Payne, Inc., was appellee, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, is in the words and figures following:



IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

No. 2704.

L. METCALFE WALLING, Administrator of the Wage and Hour Division, United States Department of Labor, APPELLANT,

vs.

HELMERICH & PAYNE, INC., APPELLEE.

Statement of Points to be Relied Upon by Appellant.

Appellant, L. Metcalfe Walling, as required by Rule 13 of the Rules of this Court, states the points on which he intends to rely, as follows:

1. The district court erred in ruling that the employees employed by the appellee pursuant to the contracts set forth in Paragraphs V, VI, IX, X, and XI of the Findings of Fact herein have been employed in compliance with the requirements of Section 7 of the Fair Labor Standards Act of 1938.

2. The district court erred in ruling that the employment and compensation by appellee of employees pursuant to the contracts set forth in Paragraphs V, VI, IX, X, and XI of the Findings of Fact herein come within the decision of the Supreme Court in Walling v. Belo Corporation, 316 U. S. 624, 62 Sup. Ct. 1223.

3. The district court erred in failing to find and rule that the employment and compensation by appellee of employees pursuant to the contracts set forth in Paragraphs V, VI, IX, X, and XI of the Findings of Fact herein violated Section 7 of the Fair Labor Standards Act of 1938.

4. The district court erred in failing to issue an injunction as prayed for enjoining the violation by the appellee of Sections 15(a)(1), 15(a)(2), and 15(a)(5) by reason of its employment and compensation of employees pursuant

to the contracts set forth in Paragraphs V, VI, IX, X, and XI of the Findings of Fact herein.

IRVING J. LEVY, Acting Solicitor,
BESSIE MARGOLIN, Assistant Solicitor,
LLEWELLYN B. DUKE, Regional Attorney,
United States Department of Labor.

Filed February 26, 1943. Robert B. Cartwright, Clerk.

Appellant's Statement of Parts of Record Necessary for Consideration on Appeal.

Appellant, L. Metcalfe Walling, pursuant to Rule 13 of the Rules of this Court, states that the parts of the record necessary for consideration on appeal are as follows:

1. Appellant's complaint.

2. Appellee's answer.

3. Stipulation of fact executed by the parties and filed and introduced in evidence at the trial, including copies of the exhibits attached thereto.

4. Complete stenographic transcript of proceedings and evidence had and taken before the Honorable Royce H. Savage, United States District Judge, on May 13, 1942, including a copy of Plaintiff's Exhibit No. 1.

5. A copy of the final judgment entered by the District Court.

6. A copy of the findings of fact and conclusions of law filed by the District Court.

7. Notice of appeal, with date of filing.

8. The designation of record filed in the District Court, with date of filing.

9. Affidavit of service of designation of record and of statement of points to be relied upon on appeal, filed in the District Court.

IRVING J. LEVY, Acting Solicitor,
LLEWELLYN B. DUKE, Regional Attorney,
BESSIE MARGOLIN, Assistant Solicitor,
United States Department of Labor.

Filed February 26, 1943. Robert B. Cartwright, Clerk.

Robert B. Cartwright, Clerk United States Circuit Court of Appeals for the Tenth Circuit, Denver, Colorado.

Dear Sir: Re: Walling v. Helmerich and Payne, Inc., C.C.A. 10, No. 2704.

I am writing you in response to your recent letter addressed to Mr. Duke, our regional attorney at Dallas, Texas, inquiring whether we desire to include in the printed record in the above case Exhibit A attached to the complaint. That exhibit consists of a copy of Regulations, Part 516.

Please be advised that it will not be necessary to include that exhibit in the printed record.

I am sending a copy of this letter to Mr. Monnet.

Very truly yours,

BESSIE MARGOLIN, Assistant Solicitor.

[Telegram.]

DA448 56 Govt-Dallas Tex 9 312P

Robert B *Cargwright*, Clerk, United States *Circupt* Court of Appeals DVR Re Walling versus Helmerich and Payne No. Twenty Seven ~~Naught~~ Four.

You need not print Exhibit "N" in record. We desire to designate in record and have printed the order substituting Walling for Holland. This designation appeared in papers we filed with clerk of trial court and has evidently been omitted from record sent your office.

LLEWELLYN B DUKE U S Dept of Labor.

Filed March 9, 1943. Robert B. Cartwright, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE ROYCE H. SAVAGE, UNITED STATES DISTRICT JUDGE, IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE, TO-WIT:

L. METCALFE WALLING, Administrator of the Wage and Hour Division of the United States Department of Labor, PLAINTIFF,

vs.

No. 568 Civil

HELMERICH & PAYNE, INC., DEFENDANT.

Complaint.

I.

Plaintiff brings this action to enjoin defendant from violating the provisions of Sections 15(a)(1), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U.S.C. Title 29, Sec. 201 et seq.), hereinafter called the Act.

II.

Jurisdiction of this action is conferred upon the court by Section 17 of the Act.

III.

Defendant is, and at all times hereinafter mentioned was, a corporation organized under and existing by virtue of the laws of the State of Delaware. Its principal place of business is located at 415 Philtower Building, Tulsa, Oklahoma, within the jurisdiction of this court. It has numerous and divers other places of business within and outside the state

of Oklahoma. It is, and at all times hereinafter mentioned was, engaged at its said places of business in the said City of Tulsa, Oklahoma, and elsewhere, in the production, sale and distribution of crude oil and other petroliferous substances, and in processes and occupations necessary to such production, sale and distribution. Its resident agent, authorized to accept service in Oklahoma, is W. H. Helmerich, 415 Philtower Building, Tulsa, Oklahoma.

IV.

3 At all times hereinafter mentioned, defendant employed and is employing approximately 499 employees in and about its said places of business in Tulsa, Oklahoma, and elsewhere, in the production of oil and other petroliferous substances and in processes and occupations necessary to such production. Substantial quantities of casing, machinery, equipment and supplies used in such production and in such processes and occupations necessary to such production are purchased and transported in interstate commerce from and through states other than the State of Oklahoma to the said places of business in the State of Oklahoma and elsewhere, and substantially all of the goods produced by the said employees in the said places of business, and goods produced by employees engaged in processes and occupations necessary to the production of said goods, have been and are being produced for interstate commerce and have been and are being sold, transported, shipped and delivered in interstate commerce from the said places of business to, into, and through States other than those States in which such places of business may be located.

V.

During the period beginning October 24, 1938, the effective date of Section 7(a)(1) of the Act, and repeatedly thereafter through October 23, 1939, defendant employed many of its aforesaid employees, who were engaged in the production of goods for interstate commerce, and in processes and occupations necessary to such production, as aforesaid, for workweeks longer than forty four (44) hours, and did fail and refuse to compensate the said employees for their

employment in excess of forty-four (44) hours in such workweek at rates not less than one and one-half times the regular rates at which they were employed, and, in fact, did fail and refuse to compensate them for such excess hours at any rates greater than the regular rates at which they were employed; and, during the period beginning October 24, 1939, the effective date of Section 7(a)(2) of the Act, and repeatedly thereafter through October 23, 1940, defendant employed many of its aforesaid employees, who were engaged in the production of goods for interstate commerce, and in processes and occupations necessary to such production, as aforesaid, for workweeks longer than forty-two (42) hours; and did fail and refuse to compensate the said employees for their employment in excess of forty-two (42) hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, and, in fact, did fail and refuse to compensate them for such excess hours at any rates greater than the regular rates at which they were employed; and, during the period beginning October 24, 1940, the effective date of Section 7(a)(3) of the Act, and repeatedly thereafter, defendant has employed many of its aforesaid employees, who were engaged in the production of goods for interstate commerce, and in processes and occupations necessary to such production, as aforesaid, for workweeks longer than forty (40) hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, and, in fact, has failed and refused to compensate them for such excess hours at any rates greater than the regular rates at which they were employed. By employing the said employees for workweeks in excess of the said hours during the said periods without compensating them for their employment in excess of the said hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, defendant has violated and is violating the provisions of Section 7 and 15(a)(2) of the Act.

VI.

During the period beginning on or about October 24, 1938, and repeatedly thereafter, defendant has sold, shipped,

delivered, transported, and offered for transportation in interstate commerce from its said places of business in Oklahoma, to, into and through states other than the state of Oklahoma, goods produced in the said places of business in the production of which, and in the processes and occupations necessary to the production of which many of its employees were employed in violation *in violation* of Section 7 of the Act, as alleged in Paragraph V hereof. By selling, shipping, delivering, transporting, and offering for transportation in interstate commerce, as aforesaid, the said goods so produced, defendant has violated and is violating the provisions of Section 15(a)(1) of the Act.

VII.

During the period beginning on or about October 24, 1938, and repeatedly thereafter, defendant has shipped, delivered, and sold, with knowledge that shipment, delivery and sale thereof in interstate commerce from points within the State of Oklahoma to, into and through other States was intended, goods produced in its said places of business in Oklahoma, in the production of which, and in the processes and occupations necessary to production of which, many of its employees were employed in violation of Section 7 of the Act, as alleged in Paragraph V hereof. By selling, shipping, and delivering, with knowledge that shipment, delivery, and sale thereof in interstate commerce, as aforesaid, was intended, the said goods so produced, defendant has violated and is violating the provisions of Section 15(a)(1) of the Act.

VIII.

On October 21, 1938, the Administrator of the Wage and Hour Division, United States Department of Labor, pursuant to the authority conferred upon him by Section 11(c) of the Act, duly issued and promulgated regulations prescribing the records of persons employed and of wages, hours and other conditions and practices of employment to be made, kept, and preserved by every employer subject to any provisions of the Act. The said regulations, and amendments thereto, were published in the Federal Register

and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516. A copy of the said regulations, as amended, is attached hereto, made a part hereof and marked "Exhibit A."

IX.

During the period beginning October 24, 1938, and repeatedly thereafter, defendant, an employer subject to the provisions of the Act and to the regulations referred to in Paragraph VIII hereof, has failed and refused to make, keep and preserve, as prescribed by said regulations, adequate records of the persons employed by it and of the wages, hours and other conditions and practices of employment maintained by it, in that the records made, kept and preserved by the defendant fail to show, adequately, among other things, the hours worked each workday and each workweek, the regular rate of pay and the basis upon which wages are paid; the wages at the regular rate of pay for each workweek (excluding extra compensation *attributable* to the excess of the overtime rate over the regular rate), and the extra wages for each workweek attributable to the excess of the overtime rate over the regular rate, with respect to many of its said employees. By failing and refusing to make, keep, and preserve adequate records as prescribed by the said regulations defendant has violated and is violating the provisions of Sections 11(c) and 15(a)(5) of the Act.

X.

Defendant has, since the effective date thereof, repeatedly violated the aforesaid provisions of the Act. A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act.

Wherefore, cause having been shown, plaintiff demands judgment enjoining and restraining defendant, its officers, agents, servants, employees, and attorneys, and all persons acting or claiming to act in its behalf and interest, from violating the provisions of Sections 15(a)(1), 15(a)(2), and 15(a)(5) of the Act, both permanently and during the

pendancy of this action, and such other and further relief as may be necessary and appropriate.

GERARD D. REILLY, Solicitor.

IRVING J. LEVY, Assistant Solicitor in Charge of Litigation, Post Office Address: c/o Wage and Hour Division, U. S. Department of Labor, 824 Santa Fe Building, Dallas, Texas, or

LLEWELLYN B. DUKE, Regional Attorney, c/o Wage and Hour Division, U. S. Department of Labor, Washington, D. C.

JOE H. MUNSTER, JR., Assistant Attorney, United States Department of Labor.
Attorneys for Plaintiff.

Endorsed: Filed (May 3, 1941). H. P. Warfield, Clerk, U. S. District Court.

Answer.

17 Comes Now the defendant, Helmerich & Payne, Inc., and for its answer to the Bill of Complaint of the plaintiff filed in the above entitled action, hereby denies each and every allegation therein contained except such allegations as may be hereinafter specifically admitted.

And for further answer said defendant alleges and states:

1. Defendant admits that it is a corporation, duly organized, created and existing under and by virtue of the laws of the State of Delaware since on or about February 6, 1940, with its principal office and place of business in the City of Tulsa, Oklahoma. That it carries on a general drilling contracting business in the Mid-Continent area of the United States, namely, in the States of Oklahoma, Texas, Kansas, New Mexico, Illinois and Nebraska, and, in carrying on said business, employes the following general classes of employees, to-wit:

A. Office employees, such as telephone girls, secretaries, stenographers, clerks, bookkeepers and assistant auditors.

B. Field employees, including rotary drillers, rotary helpers, derrick men, floor men and motor men and me-

chanics) cable tool drillers, tool dressers, truck drivers, swampers (truck drivers' helpers), lease pumpers, water pumpers and watchmen.

That the field men such as the rotary drillers, rotary helpers, cable tool drillers, tool dressers and water pumpers are employed by defendant in drilling wells for the exploration of oil and gas in the Mid-Continent area. That a large per cent of the wells so drilled are drilled and completed as dry holes and never produce articles of commerce, such as oil, gas, or otherwise.

That defendant's truck drivers are engaged in the miscellaneous and diversified business of transporting tools and equipment of defendant from place to place, sometimes wholly within a state, and sometimes from one state to another.

2. Defendant specifically denies that it has, since the effective date (October 23, 1938) of what is commonly known as the Federal Fair Labor Standards Act of 1938, been employing and paying its employees in violation of said Act, and specifically states and alleges that continually since and prior to said time it has been paying its said employees a regular or base hourly wage far in excess of thirty cents per hour for the first 40 hours worked in each work week, and one and one-half times said base or regular hourly wage for each hour worked thereafter in said week. It further specifically states and alleges that as of and from 12:01 o'clock A. M., July 16, 1941, it has been paying its said employees as above stated and in the manner and on a wage scale set forth in the copy of its general printed employment contract hereto attached, marked Exhibit "A" and made a part hereof.

Wherefore, said defendant prays that the relief prayed for in plaintiff's petition be denied and that defendant go hence with its costs.

SETTLE, MONNET & CLAMMER,
By EUGENE O. MONNET,
Attorneys for Defendant.

Exhibit A.

Helmerich & Payne, Inc., General Employment Contract.

Place..... Date.....

Helmerich & Payne, Inc.
415 Phillower,
Tulsa, Oklahoma

No. G 165

19 Gentlemen: I hereby accept employment with you as a ..... upon the following wage scale and conditions, to-wit:

1. The Base or Regular rate per hour for all classes of employees covered by this contract shall be paid for the first 40 hours worked in each calendar week and all hours in said week in excess of said 40 shall be paid for at one and one-half times said Base or Regular rate. Wages shall be paid bi-weekly (every 2 calendar weeks).

2. In the event any said bi-weekly compensation of any employee of the following classifications:

Truck Drivers	Classification 7	$80.80
Swampers	Classification 8	$74.00
Tandem Truck Drivers	Classification 9	$92.30

does not equal the sum hereinbefore set opposite the same, the company may advance and loan said employee the difference, which shall apply on future overtime payments; adjustments and accounting to be made on the first day of each year (or sooner in the company desires) and/or when said employment ceases.

3. Base or Regular hourly rates are as follows:

Classification 1 Rotary Driller	$1.33 1/3
Classification 2 Rotary Helper, except in Ill.	.82
Classification 3 Cable Driller	1.25
Classification 4 Tool Dresser	1.00
Classification 5 Rotary Helper in Illinois	.85
Classification 6 Roustabouts	.58
Classification 7 Truck Drivers	.46
Classification 8 Swampers	.42
Classification 9 Tandem Truck Drivers	.52

"Rotary Helper," under Classifications 2 and 5, shall mean and include Derrick Men, Floor Men, Motor Men and Mechanics.

4. Time spent by employees under Classifications 7, 8 and 9, in going to and from work, sleeping, eating, going to and from meals, doing work for themselves and others, shall not for any purpose be considered work time.

5. If, in any calendar week, employee shall work under other than his original Classification, his pay for that work time shall be determined, both for regular time and overtime so worked, on the above stated rate for that classification.

6. I agree to make written, signed daily reports to your home office, 415 Philtower, Tulsa, Oklahoma, on all my work time while in your *employee*.

7. It is understood that this agreement shall be effective (as to present employees executing same) as of and from July 16, 1941; that there are no oral or written understandings regarding same and it shall cancel any and all prior agreements between us (if any). You may terminate my employment at any time, either with or without cause, and either with or without notice, as you may in your uncontrollable discretion from time to time determine.

.....
Employee

Accepted on the above date:

Helmerich & Payne, Inc.

By .....
Company's Representative

Endorsed: Permission given to file out of time this 26 day of September, 1941; Royce H. Savage, Judge. Filed (9-26-41); H. P. Warfield, Clerk, U. S. District Court.

Order for Substitution of Party Plaintiff.

It The parties hereto having stipulated that L. Metcalfe Walling, Administrator of the Wage and Hour Division of the United States Department of Labor, be sub-

stituted as party plaintiff herein in the place and stead of Thomas W. Holland, it is

Ordered that, L. Metcalfe Walling, as Administrator of the Wage and Hour Division of the United States Department of Labor, be and hereby is substituted as plaintiff herein in the place and stead of Thomas W. Holland, without prejudice to the proceedings already had in this action and that this cause may be continued and maintained by said L. Metcalfe Walling as successor in office of said Thomas W. Holland.

Dated March 25, 1942.

ROYCE H. SAVAGE, District Judge.

Endorsed: Filed Mar. 25, 1942. H. P. Warfield, Clerk, U. S. District Court. Recorded: Journal 4, Page 818.

Stipulation.

24 For the purposes of this action and for no other purposes, the plaintiff and the defendant hereby stipulate and agree as follows:

I.

The defendant is a corporation, having been organized under the laws of the State of Delaware on or about February 8, 1940, the Delaware corporation being the successor to a corporation of the same name organized and existing under the laws of the State of Oklahoma, such Oklahoma corporation having been incorporated prior to the effective date of the Fair Labor Standards Act of 1938 (October 24, 1938), and the Delaware corporation having taken over all of the assets and assumed all of the liabilities of the Oklahoma corporation without substantial change in management or personnel.

II.

Evidence of the employment and business practices of the Oklahoma corporation (including those stipulated herein) may be considered to the same force and extent, for the purposes of this action only, as if done by the Delaware corporation.

III.

The defendant is and has been since a date prior to October 24, 1938, engaged in the drilling of oil and gas wells for the purpose of producing oil and gas. Most of the wells drilled by the defendant have been drilled under contract for oil companies engaged in the production of oil and gas, but some of the wells have been drilled by the defendant on leases owned by it and for its own account. It is and has been during the same period also engaged in the production of oil and gas from leases owned and operated in whole or in part by it. In connection with both the drilling activities of the defendant and with the production activities, the defendant is and has been engaged in interrelated maintenance, repair and construction and clerical activities.

IV.

Drilling has been done by the defendant since October 24, 1938, for The Texas Company, Gulf Oil Corporation, Carter Oil Company, Stanolind Oil and Gas Company, and many other companies. During the same period of time oil has been sold by the defendant to Magnolia, Sinclair, Mid-Continent, Stanolind and many other companies.

Substantially all of the oil and gas produced, both from wells drilled by the defendant under contract with other oil companies and from wells drilled by the defendant on its own account, and oil produced from leases owned and operated by the defendant has been, and is being produced for subsequent shipment in interstate commerce either in its crude form, or as refined products, such oil moving from the state in which it may have been produced into other states.

V.

Since October 24, 1938, the defendant has carried on operations both in the drilling of oil wells and in the production of oil and gas from producing wells in various states, such activities having taken place in the states of Oklahoma, Texas, New Mexico, Illinois and elsewhere. In the furtherance of such activities, the defendant has employed an average of approximately 400 employees, of whom approximately 305 were engaged in the drilling of wells either under contract or on the defendant's own ac-

count, or were engaged in occupations and processes essential to the drilling operations; of whom approximately 70 were engaged as pumpers, etc., in the operation of oil producing leases owned and operated in whole or in part by the defendant or in processes and occupations necessary thereto and of whom approximately 25 were employed as clerical employees whose duties consisted of the performance of clerical duties in connection with both the drilling activities and the producing activities.

VI.

26 Between October 24, 1938 and October 16, 1939, the defendant employed its drilling employees under an employment contract, the terms of such contract being evidenced by an endorsement placed upon pay checks to be delivered to such employees and reading as follows:

"By endorsement of this check employee acknowledges that from 11-1-38, he is employed by Helmerich & Payne, Inc., on the following wage scale:

The base or regular rate per hour shall be paid for the first 4 hours in each 8 hour tour, and hours (in each said 8 hour tour) in excess of the four shall be paid for at 1½ times base or regular rate. Base rate shall never apply to more than 44 hours in any calendar week.

Base or regular rates are as follows:

Rotary Drillers	$1.10
Rotary Helpers	.70
Roustabouts	.48
Water Pumpers	.45
Watchmen	.28

If your particular work does not come under the above classifications, consult your foreman for your rate."

VII.

During such period, the defendant drilled an oil well known as Well No. 3, Stanecipher lease in Marion County, Illinois, under contract with the Texas Company. The employees of the defendant employed in drilling such well were as follows: (The occupations at which each of the following employees were employed are set out opposite their names together with the rates paid such employees

prior to the effective date of the Fair Labor Standards Act of 1938):

C. L. McKee	Driller	$11.00
T. B. Whitman	Helper	7.00
J. H. Langley	Helper	7.00
W. D. Howard	Helper	7.00
J. M. Faust	Watchman	4.50
R. B. Powell	Driller	11.00
A. J. Roberts	Helper	7.00
W. E. Robertson	Helper	7.00
C. E. Houghton	Helper	7.00
J. D. Nelson	Helper	7.00
Everett O'Day	Helper	7.00
Charlie Staley	Helper	11.00
J. J. Hardin	Helper	7.00
H. M. Buettemeyer	Helper	7.00
G. M. Whitson	Helper	7.00
W. C. Newsom	Helper	7.00
R. F. McCann	Helper	7.00
Ben Dryer	Helper	7.00
Charley Austin	Watchman	4.50

VIII:

27 Attached hereto, made a part hereof, and marked "Exhibit A" are full, true and correct copies of all payroll records, maintained by the defendant, showing the time worked and the wages paid the above named employees in connection with the drilling of said well. Wherever the payroll records of the defendant fail, insofar as drilling employees are concerned, to show the actual hours worked but only show days worked, the "day" will be deemed to mean a "tour of duty" consisting of 8 hours work. The hours worked, wages paid, the contract of employment, etc., as set out above and as set out in Exhibit A for the named employees, are typical of all other drilling employees of the defendant during the period specified above.

The oil produced from the above described well following its completion as a producing well was sold, shipped, transported and delivered in interstate commerce by the owner and operator of said well.

IX.

Between October 16, 1939 and October 1, 1940, the defendant employed its drilling employees under a contract of employment, such contract being evidenced by an endorsement placed upon the pay checks delivered to such employees and reading as follows:

28 "By endorsement of this check employee acknowledges that from 10-16-39, he is employed by Helmerich & Payne, Inc., on the following wage scale:

"The base or regular rate per hour shall be paid for the first 4 hours in each 8 hour tour, and hours (in each said 8 hour tour) in excess of the four shall be paid for at 1½ times base or regular rate. Base rate shall never apply to more than 42 hours in any calendar week.

Base or regular rates are as follows:

Rotary Drillers	$1.10
Rotary Helpers	.70
Roustabouts	.48
Water Pumpers	.45
Watchmen	.30

If your particular work does not come under the above classifications, consult your foreman for your rate."

X.

During the period mentioned in paragraph IX, the defendant drilled an oil well known as Well No. 3, Darvell lease in Graham County, Texas, under contract with the Continental Oil Company. The employees of the defendant employed in drilling such well were as follows: (the occupations at which each of the following employees were employed are set out opposite their names)

M. F. Self	Driller	A. E. Barnes	Helper
Earl L. Clift	Helper	J. F. Owens	Driller
G. A. Alberty	Helper	C. C. Woodall	Helper
Pad Singley	Helper	A. A. Gardner	Helper
R. H. Thompson	Helper	J. W. Cowart	Helper
L. C. Cornett	Driller	James Frost	Helper
Warren Roe	Helper	R. H. Thompson	Watchman
H. W. Lauder	Helper	James Frost	Watchman
L. H. Schiller	Helper		

XI.

29 Attached hereto and marked "Exhibit B" are full true and correct copies of all payroll records maintained by the defendant, showing the time worked and the wages paid the employees named in paragraph X above in connection with the drilling of said well. Wherever the payroll records of the defendant fail, insofar as drilling employees are concerned, to show the actual hours worked but only show days worked, the "day" will be deemed to mean a "tour of duty" consisting of 8 hours worked. The hours worked, wages paid, the contract of employment, etc., as set out above and as set out in Exhibit B for the named employees, is typical of all other drilling employees of the defendant during the period specified above.

The oil produced from the above described well following its completion as a producing well was sold, shipped, transported and delivered in interstate commerce by the owner and operator of said well.

XII.

Between October 1, 1940 and July 16, 1941, the defendant herein employed its drilling employees under a written contract of employment. A copy of such contract is attached hereto and marked "Exhibit C" and made a part hereof.

XIII.

During such period, the defendant drilled an oil well, known as Well No. B-1, School Land lease, Pottawatomie County, Oklahoma, under contract with the Morgan and Flynn Company. The employees employed in drilling such well were as follows: (the occupations at which each of the following employees were employed being set out opposite the name of each employee)

C. E. McKee	Driller	W. B. Bechtel	Helper
W. D. Howard	Helper	W. H. Whalen	Helper
W. E. Robertson	Helper	J. C. Best	Helper
Frank Smith	Helper	Rolland Everett	Watchman
L. M. Wall	Driller	James H. Langley	Helper
D. T. Meador	Helper	C. C. McPherson	Driller
J. F. Davis	Helper	B. L. Kelly	Helper
Frank Hyde	Mechanic	Murry Stine	Helper
G. A. Gresham	Driller	Frank Hyde	Mechanic
Jake Simmonds	Helper	Henry Hawkins	Driller

XIV.

30 Attached hereto, made a part hereof, and marked "Exhibit D" are full, true and correct copies of all payroll records maintained by the defendant, showing the hours worked and wages paid the employees named in paragraph XIII above in connection with the drilling of said well. The hours worked, wages paid, the contract of employment, etc., as set out above, or set out in Exhibits C and D, attached hereto, are typical to all other drilling employees of the defendant during the period specified.

The oil produced from the well described in paragraph XIII above, following its completion as a producing well, was sold, shipped, transported and delivered in interstate commerce by the owner and operator of said well.

XV.

From and after July 16, 1941, and during the pendency of this action, all drilling employees of the defendant were employed under a written contract of employment, a copy of which is attached hereto, marked "Exhibit E" and made a part hereof.

Subsequent to July 16, 1941, the defendant drilled for itself a well known as No. C-7, School Land lease, Pottawatomie County, Oklahoma. The employees employed
31 in drilling such well were as follows (the occupations at which each of such employees were employed is set out opposite the names of such employees):

Jack Wilson	Driller	Frank Hyde	Mechanic
H. E. Silas	Helper	H. C. Rich	Driller
Gerkin Gaber	Helper	A. F. Griffin	Helper
Earl Coleman	Helper	M. L. Tucker	Helper
L. H. Baker	Driller	Egra Gibson	Helper
C. L. McKee	Driller	Otto Nugent	Water pumper
W. D. Howard	Helper	Jack Wilson	Helper
Frank Smith	Helper		

XVI.

Attached hereto, marked "Exhibit F" and made a part hereof, are full, true and correct copies of all payroll records, showing the hours worked and wages paid for each of the said employees in connection with the drilling

of the well described in paragraph XV hereof. The hours worked, wages paid, the contract of employment, etc., as set out above, and set out in Exhibits E and F attached hereto, are typical of those conditions of employment as they apply to all other drilling employees of the defendant during the period specified.

The oil produced from the above described well following its completion as a producing well, was sold, shipped, transported and delivered in interstate commerce by the owner and operator of said well.

XVII.

Between October 24, 1938, and Sept. 1, 1940, the defendant employed production employees (pumpers and switchers on producing leases) in connection with producing leases owned and operated in whole or in part by the defendant under an oral contract of employment providing for a regular monthly salary to be paid such production employees irrespective of the actual number of hours worked by them during the weeks of their employment and irrespective of the number of hours reported to the defendant by them as having been worked. During said period, the defendant owned and operated a producing lease known as the Russell lease in McPherson County, Kansas, said lease being operated by a pumper residing on said lease at all times during said period. Said pumper was paid the sum of $130.00 per month for his employment on said lease, said sum being paid to him each month irrespective of the actual number of hours worked by him and irrespective of the number of hours of work reported by him to the defendant. The name of the pumper residing on said lease and operating the same for and on behalf of the defendant herein is Homer J. Farrar. Attached hereto, made a part hereof and marked "Exhibit G" is a full, true and correct copy of typical payroll records maintained by the defendant for said employee during the said period. The method of payment of this employee, Homer J. Farrar, and the payroll records maintained by the defendant as set out in "Exhibit G" in connection with his employment are typical of all pumpers or other production employees employed by the defendant during said period as to all leases owned and operated in whole or in part by the defendant though there is a variation among the production

employees employed by the defendant as to the hours worked and wages paid such employees, such variation being occasioned by the differences in the leases, seniority of service, and other causes, however many of such production employees frequently worked hours in excess of the maximum specified in Section 7 of the Act.

The oil produced from the above described lease was sold to Shell Oil Company at the lease where said oil was produced. Said oil was thereafter intermingled with oil produced from other leases owned by persons or corporations other than this defendant and substantial portions of such intermingled oil was subsequently shipped outside the State of Kansas either as crude oil or as refined products thereof. Oil produced from other leases elsewhere owned by the defendant was similarly sold and intermingled with oil produced by others and shipped in interstate commerce either as crude oil or refined products thereof.

XVIII.

Between Sept. 4, 1940 and July 15, 1941, production employees were employed by the defendant herein under a written contract of employment, a copy of which is hereto attached, marked "Exhibit C" and made a part hereof. During such period the defendant owned and operated the lease in McPherson County, Kansas, described in paragraph XVII hereof. The said lease was operated by the same resident pumper named in paragraph XVII hereof. A full, true and correct copy of typical payroll records maintained by the defendant for said employee are attached hereto, made a part hereof, and marked "Exhibit H".

The method of payment of this employee, Homer J. Farrar, and the payroll records maintained by the defendant as set out in "Exhibit H" in connection with his employment are typical of all pumpers or other production employees employed by the defendant during said period as to all leases owned and operated in whole or in part by the defendant though there is a variation among the production employees employed by the defendant as to the hours worked and wages paid such employees, such variation being occasioned by the differences in the leases, seniority of services and other causes, however many of such production employees frequently worked hours in excess of

the maximum specified in Section 7 of the Act without being compensated therefor with any compensation, except as provided in said contract identified in Exhibit C.

The oil produced from the above described lease was sold to Shell Oil Company at the lease where said oil was produced. Said oil was thereafter intermingled with oil produced from other leases owned by persons or corporations other than this defendant and substantial portions of such intermingled oil was subsequently shipped outside the
34 State of Kansas either as crude oil or as refined products thereof. Oil produced from other leases owned elsewhere by the defendant was similarly sold and intermingled with oil produced by others and shipped in interstate commerce either as crude oil or refined products thereof.

XIX.

From and after the 16th day of July, 1941, and during the pendency of this action, pumpers employed by the defendant were employed under a written contract of employment, a copy of which is attached hereto, made a part hereof and marked "Exhibit I". The lease described in paragraph XVII was and is being operated by the defendant through the employee named in Paragraph XVII. A full, true and correct copy of typical payroll records maintained by the defendant for said employee during such period are attached hereto, made a part hereof, and marked "Exhibit J".

The method of payment of this employee, Homer J. Farrar, and the payroll records maintained by the defendant as set out in "Exhibit I" in connection with his employment are typical of all pumpers or other production employees employed by the defendant during said period as to all leases owned and operated in whole or in part by the defendant though there is a variation among the production employees employed by the defendant as to the hours worked and wages paid such employees, such variation being occasioned by the difference in the leases, seniority of service, and other causes, however many of such production employees frequently worked hours in excess of the maximum specified in Section 7 of the Act without being compensated therefor, except as provided under contract identified as "Exhibit I".

The oil produced from the above described lease was sold to Shell Oil Company at the lease where said oil was produced. Said oil was thereafter intermingled with oil produced from other leases owned by persons or corporations other than this defendant and substantial portions of such intermingled oil was subsequently shipped outside the State of Kansas either as crude oil or as refined products thereof.

Oil produced from other leases elsewhere owned by the defendant was similarly sold and intermingled with oil produced by others and shipped in interstate commerce either as crude oil or refined products thereof.

XX.

Between October 24, 1938 and October 1, 1940, the defendant herein employed various employees as truck drivers and swampers (truck drivers' helpers) under an oral contract of employment providing for a regular monthly salary irrespective of the hours actually worked by such employees and irrespective of the hours of work by such employees to the defendant. The work performed by such employees was in connection with and necessary to the carrying on of drilling activities and of production activities by the defendant. Such employees in performance of their duties, in connection with the carrying on of drilling activities and production activities, carried equipment such as rigs, boilers, cable drilling tools, fuel, drilling mud, water pumping equipment, rod pulling equipment, etc., to and from the places where such equipment was used in the above described drilling activities and production activities, and without the transportation of such equipment and supplies, the operation of the drilling rigs or of the producing wells would have been greatly handicapped, if not rendered impossible. In addition, transportation to employees was often furnished to and from the places where such drilling activities and production activities were carried on. Among other employees employed by the defendant in such occupations was Frank Wilson. Attached hereto, made a part hereof, and marked "Exhibit K" is a full, true and correct copy of typical payroll records maintained during said period by the defendant for said employee. The said employee is typical of employees engaged in truck driving or as swampers by the company in all of its operations and the payroll records attached are typical of the records maintained by

the defendant for all such employees, and the facts reflected in such records as to the hours worked and the wages paid Frank Wilson are typical of the hours worked and the wages paid to all of the employees employed in similar occupations by the defendant.

36 Nothing in this paragraph shall be deemed to be a waiver by the defendant of the exemption from overtime granted drivers of private carriers under Section 13(b)(1) of the Act during those workweeks in which such driver or drivers crossed state lines in pursuit of their duties.

XXI.

Between October 1, 1940, and July 15, 1941, the defendant employed employees as truck drivers and swampers under a written contract of employment. A copy of such contract is attached hereto, marked "Exhibit C" and made a part hereof. During such period, the same employee named in Paragraph XX was employed in the same occupation as specified in Paragraph XX. Attached hereto, made a part hereof, and marked "Exhibit L" are full, true and correct copies of typical payroll records maintained by the defendant for such employee during the period. The said employee is typical of employees engaged in truck driving or as swampers by the company in all of its operations and the payroll records attached are typical of the records maintained by the defendant for all such employees, and the facts reflected in such records as to the hours worked and the wages paid Frank Wilson are typical of the hours worked and the wages paid to all employees employed in similar occupations by the defendant.

Nothing in this paragraph shall be deemed to be a waiver by the defendant herein of the exemption from overtime granted drivers of private carriers under Section 13(b)(1) of the Act during those workweeks in which such driver or drivers crossed state lines in pursuit of their duties.

XXII.

From and after July 15, 1941, the defendant herein employed employees engaged as truck drivers or swampers under a written contract of employment. A copy of such contract is attached hereto, marked "Exhibit E". The em-

ployee named in paragraph XXI hereof was and is employed as such employee by the defendant in connection with the carrying on of the defendant of its drilling
37 and production activities and operations. A full, true and correct copy of typical payroll records maintained by the defendant for such employee for such period are attached hereto, marked "Exhibit M" and made a part hereof. The said employee is typical of employees engaged in truck driving or as swampers by the company in all of its operations and the payroll records attached are typical of the records maintained by the defendant for all such employees, and the facts reflected in such records as to the hours worked and the wages paid Frank Wilson are typical of the hours worked and the wages paid to all employees employed in similar occupations by the defendant.

Nothing in this paragraph shall be deemed to be a waiver by the defendant herein of the exemption from overtime granted drivers of private carriers under Section 13(b)(1) of the Act during those workweeks in which such driver or drivers crossed state lines in pursuit of their duties.

XXIII.

The defendant has, in connection with its drilling operations, as described more particularly in Paragraphs VI to XIX inclusive hereof, employed various employees as watchmen and water pumpers. Such employees so employed have been employed under the contracts set out in Paragraphs VI to XIX inclusive hereof, and have been compensated in the same manner as were the employees named in said paragraphs. The information in said paragraphs and in the exhibits attached hereto as to the wages paid and hours worked are typical of the water pumpers and watchmen although there is a variation as to the total hours worked and as to the total wages paid between various jobs due to various circumstances. The watchmen were, under ordinary circumstances, required to perform no specific duties but were merely required to watch a rig, either during a temporary shutdown or between drilling jobs. The rigs
38 watched by the watchmen were used for the purpose of drilling oil and gas wells. The water pumpers were engaged in pumping water from water wells located near drilling locations where the defendant was exploring

for oil and gas, the water so pumped being used in connection with and necessary to the drilling operations.

XXIV.

The Administrator of the Wage and Hour Division, United States Department of Labor, predecessor in office of the plaintiff herein, in accordance with and pursuant to the authority conferred on him by Section 11(c) of the Act, did on October 21, 1938, duly issue and promulgate regulations prescribing the records of persons employed, and of wages, hours and other conditions and practices of employment to be made, kept and *preserves* by every employer subject to the Act. Exhibit A attached to the complaint filed herein is a full, true and correct copy of the Regulations, known as Title 29, Chapter V, Code of Federal Regulations, Part 516, that were in effect at the time this action was brought, and Exhibit W hereto, made a part hereof is a full, true and correct copy of such regulations as presently in force.

XXV.

Nothing in this Stipulation shall in any manner be deemed to preclude either party hereto from introducing further evidence, either oral or documentary, and such further evidence may be as to matters not covered herein, or cumulative in nature.

39 Executed by the respective parties hereto by and through their attorneys, this 13 day of April, A. D. 1942.

WARNER W. GARDNER, ESQUIRE,
Solicitor of Labor;
ROY C. FRANK,
Assistant Solicitor;
LLEWELLYN B. DIEKE,
Regional Attorney;
EARL STREET,
Associate Attorney,
Attorneys for Plaintiff.

EUGENE O. MONNET,

.....

Attorneys for Defendant.

Endorsed: Filed in open court May 13, 1942. H. P. Warfield, Clerk, U. S. District Court.

SEMI-MONTHLY TIME SHEET

Hefner Creek & Pipeline (Company)

Texas Co (Company Owning Lease) Stonecipher (Name of Lease) Well No. 3 String No. 17

First Half Month of Nov 1934 Foreman

NAME	OCCUPATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total No. Days	RATE	AMOUNT
G. F. McKee	Driller	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	12	11 00	132 00
J. B. Whitson	Helper	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	12	7 00	84 00
J. H. Langley	"	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	12	7 00	84 00
W. D. Howard	"	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	12	7 00	84 00
A. M. Jarrett	Watchman									✓	✓	✓					4	4.50	18 00
W. B. Powell	Driller	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	15	12 00	180 00
A. J. Roberts	Helper	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	15	7 00	105 00
W. E. Robertson	"	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	12	7 00	84 00
C. E. Houghton	"	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	12	7 00	84 00
J. D. Nelson	"	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	✓	12	7 00	84 00
Everett O. Day	"						✓										1	7 00	7 00
Charlie Staley	Driller	✓	✓	✓	✓	✓	✓						✓	✓	✓	✓	13	11 00	143 00
J. J. Hardin	Helper	✓	✓	✓	✓	✓	✓						✓	✓	✓	✓	13	7 00	91 00
H. M. Buettemeyer	"	✓	✓	✓	✓	✓	✓						✓	✓	✓	✓	13	7 00	91 00
T. M. Whitson	"	✓	✓	✓	✓	✓	✓						✓	✓	✓	✓	13	7 00	91 00
W. C. Rawson	"						✓										1	7 00	7 00
E. F. McCann	"						✓										1	7 00	7 00
Dave Dryer	"						✓										1	7 00	7 00
Shirley Austin	Watchman	✓															1	4.50	4.50

DEDUCTIONS

NAME	Draft No.	Amount
Dave Dryer	2023	6 93
Claude McKeever		2 00

#1 O. Johnson $104.00 — TOTAL PAY ROLL $1387.50

J. Stonecipher 760.50 — TOTAL DEDUCTIONS 9 81

City of Eastland 523.00 — BALANCE DUE $1364.69

$1387.50

C H B 13.88

2-B

Ex "A"

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

A B Powell
Supt. or Foreman

SEMI-MONTHLY TIME SHEET

Helmerich & Payne (31)
Company

Continental — Company Owning Lease
Dowell — Name of Lease
3 — Well No
21 — String No
First — Half Month of May 1939
Foreman L C Cornett

NAME	OCCUPATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Total No Days	RATE	AMOUNT
E. Self	Driller	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13	11 00	143 00
L. Clift	Helper	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13	7 00	91 00
Alberty	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13	7 00	91 00
Singley	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13	7 00	91 00
Thompson	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13	7 00	91 00
Cornett	Driller	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	15	12 50	187 50
Roe	Helper	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	17	7 00	119 00
Lauder	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	17	7 00	119 00
Schiller	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	17	7 00	119 00
Barnes	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	17	7 00	119 00
Owens	Driller	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	13	11 00	143 00
Woodall	Helper	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	14	7 00	98 00
Gardner	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	14	7 00	98 00
Cowart	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	14	7 00	98 00
James Frost	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	15	7 00	105 00
P.H Thompson	Watchman										✓	✓						2	4 50	9 00
James Frost	"																	1	4 50	4 50

DEDUCTIONS

NAME	Draft No.	Amount
B		1539

TOTAL PAY ROLL	1726 00
TOTAL DEDUCTIONS	1539
BALANCE DUE	1,71061

(2-B)

Ex B

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

A. R. Calman
Supt. or Foreman

[Exhibit C.]

HB Employment Contract No. 529

Place Salem Ill Date Sept 4-1940

Helmerich & Payne, Inc., 415 Philtower, Tulsa, Oklahoma.

Gentlemen: I hereby accept employment with you as a Rotary Helper upon the following wage scale and conditions, to-wit:

The base or regular rate per hour for employees coming under classifications 1, 2, 3, 4, 5, 6, 7 and 10 below shall be paid for the first 4 hours in each 8 hour tour and hours (in each said 8 hour tour) in excess of the 4 shall be paid for at 1½ times said base or regular rate.

The base or regular rate per hour for employees under classifications 9, 11 and 12 below shall be paid for the first 5 hours in each 12 hour tour and hours (in each said 12 hour tour) in excess of the 5 shall be paid at 1½ times base or regular rate.

The base or regular rate per hour for employees under classification 8 noted below shall be paid for the first 5 hours in each 10 hour tour and hours (in each said 10 hour tour) in excess of the 5 shall be paid for at 1½ times base or regular rate.

In event each monthly compensation of any employee of the following classifications:

Lease Pumpers	(classification No. 8)	$130.00
Truck Drivers	(classification No. 11)	165.00
Swampers	(classification No. 12)	150.00

does not equal the sum hereinabove set opposite the same, the Company will advance said employee the difference which shall apply on future overtime payments; adjustment to be made on January 1st of each year and when said employment ceases.

Base or regular hourly rates are as follows:

Classification	1 Rotary Driller	$1.10
"	2 Rotary Helpers	.70
"	3 Cable Driller	1.00
"	4 Tool Dresser	.80
"	5 Mechanics	.70
"	6 Roustabouts (in Kansas & Texas)	.48
"	7 Water Pumpers	.45
"	8 Lease Pumpers	.34
"	9 Watchmen	.30
"	10 Roustabouts (In Okla. & Illinois)	.50
"	11 Truck Drivers	.35
"	12 Swampers	.32

Base rate shall never apply to more than 40 hours in any work week.

I agree to make daily reports to your home office at 415 Philtower, Tulsa, Oklahoma, of all my work time while in your employ.

It is understood that you may terminate my employment at any time either with or without cause and either with or without notice as you may in your uncontrollable discretion from time to time determine.

W. E. BECHTEL, Employee.

Witnesseth:
CHAS STALEY,
Company's Representative. (2-E)

90

SEMI-MONTHLY TIME SHEET — **HELMERICH & PAYNE, INC.**

Morgan & Flynn — Name of Lessee: School Land — Well No.: B-1 — Rig No.: 8 — Casing No.:

Last Half-Month of April 194 1 — Foreman: F M Hall

NAME	OCCUPATION	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total Hrs.	R.T O.T	RATE R.T	RATE O.T	AMOUNT
F Mc Kee	Driller	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓							80	40	1.10	1.65	110.00
D Howard	Helper	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓							80	40	.90	1.05	70.00
B Robertson	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓							80	40	.70	1.05	70.00
and Smith	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓							80	40	.70	1.05	70.00
m Hall	Driller	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	120	60	.75	1.13	189.50
J Meador	Helper	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	½	½					82	41	.90	1.05	86.30
J Davis	"	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓							80	40	.70	1.05	70.00
and Hyde	Mech.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	140	60	.70	1.05	105.00
G Gresham	Driller	✓	✓	✓	✓	✓	✓	✓	✓			✓								72	36	1.10	1.65	99.00
de Simmonds	Helper	✓	✓	✓	✓	✓		✓	✓	✓										72	36	.70	1.05	63.00
B Buffel	"	✓	✓	✓	✓	✓	✓	✓	✓	✓							½	½		82	41	.90	1.05	79.00
H Whalen	"	✓	✓	✓	✓	✓	✓	✓	✓	✓										80	40	.70	1.05	70.00
C Beat	"	—								✓										5	4	.70	1.05	7.00
land Everett	Watchman											½	½							14	10	.90	.45	9.30

DEDUCTIONS NAME	Draft No.	Amount
C Beat	3683	6 93
Gresham	3684	98 01
Buffel	3685	78 21
Whalen	3686	69 30
Hall	Gen	6 38
Mc Kee	✓	7 00
Robertson	✓	7 73
Meador	✓	7 67
Hyde	✓	3 73
O A B		1095
		390 91

OFFICE DISTRIBUTION: School Land B-1 — AMOUNT: 1096 10

TOTAL PAY ROLL	1096 10
TOTAL DEDUCTIONS	390 91
BALANCE DUE	705 19

2-G

Ex "D"

I hereby certify that the men above named have been employed in the service of this Company and that the time and rates shown above are correct.

F M Hall
Supt. or Foreman

35

35

SEMI-MONTHLY TIME SHEET — **HELMERICH & PAYNE, INC.**

The Texas Co — Name of Lease: N. Butcher — Well No. 1 — Survey No. 8

Helmerich & Payne — Name of Lease: School land — Well No. B-1 — Survey No. 8

First Half Month of April 194 1 — Foreman L. M. Hall

NAME	OCCUPATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total Hrs.	R.T.	O.T.	RATE R.T.	RATE O.T.	AMOUNT
C L McKee	Driller	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	170	60	110		1.65	165.00
W B Howard	Helper	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	170	60	70		1.05	105.00
James N Langley	"	✓	✓	✓	✓												40	20	20		1.05	35.00
Frank Boyle	"	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	170	60	70		1.05	105.00
N B Robytton	"						✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	80	40	40		1.05	70.00
C C McPherson	Driller	✓	✓	✓																		
B J Kelly	Helper	✓	✓	✓													37	16	20		1.05	37.80
Murry Stine	"	✓															8	4	4		1.05	7.00
Fraud Hyde	Mech	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	170	60	70		1.05	105.00
Henry Harkins	Helper	✓	✓	✓													37	16	20		1.05	37.80
L G Graham	Driller	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	117	56	61		1.65	154.00
Jake Simmonds	Helper	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	117	56	61		1.05	98.00
W E Bechtel	"	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	117	56	61		1.05	98.00
W N Nealon	"	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	117	56	61		1.05	98.00
L M Hall	Driller				✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	90	42	48	1.75	1.875	150.00
D J Meador	Helper						✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	80	40	40		1.05	70.00
J J Davis	"						✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	80	40	40		1.05	70.00
Rolland Emmett	Watchman					✓	✓										24	16	8		.45	9.30

Butcher #1 — School land B-1

DEDUCTIONS

NAME	Ded. No.	Amount
W B Howard	3680	34.68
Frank Boyle	3681	34.65
James N Langley	3682	34.65
L M Wall	Loan	6.40
C L McKee	✓	7.00
W E Robertson	✓	7.73
Frank Boyle	✓	3.73
D J McAdoo	✓	7.68
W E Bechtel	✓	7.81
O A B		13.95
		131.32

OFFICE DISTRIBUTION

	AMOUNT
N Butcher #1	391.50
School land B-1	1,003.80

TOTAL PAY ROLL	1395.30
TOTAL DEDUCTIONS	131.32
BALANCE DUE	1264.98

OAB

2-H

Ex "D"

I hereby certify that the men above named have been employed in the service of this Company and that the time and rates above shown are correct.

L. M. Hall
Supt. or Foreman

[Exhibit E.]

Helmerich & Payne, Inc.

General Employment Contract.

Place South Maud Date 9/28/41

Helmerich & Payne, Inc., 415 Philtower, Tulsa, Oklahoma.

No. G 726

Gentlemen: I hereby accept employment with you as a Rotary Driller upon the following wage scale and conditions, to-wit:

1. The Base or Regular rate per hour for all classes of employees covered by this contract shall be paid for the first 40 hours worked in each calendar week and all hours in said week in excess of said 40 shall be paid for at one and one-half times said Base or Regular rate. Wages shall be paid bi-weekly (every 2 calendar weeks).

2. In the event any said bi-weekly compensation of any employee of the following classifications:

Truck Drivers	Classification 7	$80.80
Swampers	Classification 8	$74.00
Tandem Truck Drivers	Classification 9	$92.30

does not equal the sum hereinbefore set opposite the same, the company may advance and loan said employee the difference, which shall apply on future overtime payments; adjustments and accounting to be made on the first day of each year (or sooner if the company desires) and/or when said employment ceases.

3. Base or Regular hourly rates are as follows:

Classification 1 Rotary Driller	$1.33 1/3
Classification 2 Rotary Helper, except in Ill.	.82
Classification 3 Cable Driller	1.25
Classification 4 Tool Dresser	1.00
Classification 5 Rotary Helper in Illinois	.85
Classification 6 Roustabouts	.58
Classification 7 Truck Drivers	.40
Classification 8 Swampers	.42
Classification 9 Tandem Truck Drivers	.52

"Rotary Helper", under Classifications 2 and 5, shall mean and include Derrick Men, Floor Men, Motor Men and Mechanics.

4. Time spent by employees under Classifications 7, 8 and 9, in going to and from work, sleeping, eating, going to and from meals, doing work for themselves and others, shall not for any purpose be considered work time.

5. If, in any calendar week, employee shall work under other than his original classification, his pay for that work time shall be determined, both for regular time and overtime so worked, on the above stated rate for that classification.

6. I agree to make written, signed daily reports to your home office, 415 Philtower, Tulsa, Oklahoma, of all my work time while in your employ.

7. It is understood that this agreement shall be effective (as to present employees executing same) as of and from July 16, 1941; that there are no oral or written understandings regarding same and it shall cancel any and all prior agreements between us (if any). You may terminate my employment at any time, either with or without cause, and either with or without notice, as you may in your uncontrollable discretion from time to time determine.

H. H. Rich, Employee.

Accepted on above date:
Helmerich & Payne, Inc.,
By C. L. McKee,
Company's Representative.

(2-1)

19

SEMI-MONTHLY TIME SHEET — HELMERICH & PAYNE, INC.

Helmerich & Payne — Company Doing Logging | School Land — Name of Lease | Well No. C-7 | Lease No. 8

3/16 Half Month of March 31 1942 | Foreman C. L. McKee

NAME	OCCUPATION	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total Hrs.	RATE S.T.	RATE O.T.	AMOUNT
Jack Wilson	driller	8	8															16	.33	.33	71 33
H. C. Silas	helper	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	104	.30	.37	95 17
Martin Huber	helper	8	8	8	8	8	8	8	8	8								72	.30	.37	65 60
Earl Coleman	helper	8	8	8	8	8	8	8	8	8	8	8						104	.30	.37	95 17
L. H. Baker	driller			8	8	8	8	8	8	8								72	.33	.49	96 00
C. L. McKee	driller	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	176	.30	—	175 00
W. D. Hayward	helper	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	112	.30	.37	101 96
Frank Smith	helper	8	8															16	.30	.37	3 80
Frank Hyde	helper	8	8	16	8	8	8	8	8	8	8	8	8	8	8	8	8	176	.30	.37	177 18
H. H. Rich	driller	8	8	8	8	8	8	8	8	8	8	8						96	.30	.33	138 66
A. J. Griffin	helper	8	8	8	8	8	8	8	8	8	8	8						96	.30	.37	85 28
N. L. Taylor	helper	8	8	8	8	8	8	8	8	8	8	8						96	.30	.37	85 28
Ezra Gibson	helper	8	8	8	8	8	8	8	8	8	8	8						96	.30	.37	85 28
Otto Nugent	watch pumper	12	12	12	12	12	12	12	12	12	12	12	12					144	.30	.37	54 60
Jack Wilson	helper			8	8	8	8	8	8	8	8	8	8					88	.30	.37	8 00

DEDUCTIONS

NAME	Ded. No.	Amount
C. L. McKee	Ins	7 00
Frank Hyde	/	3 73
H. H. Rich	/	7 00

OAB

1339 21 17

E-11-E-111 OFFICE DISTRIBUTION — School Land C-7 — Office

AMOUNT	
1339	21

TOTAL PAY ROLL	1339 21
TOTAL DEDUCTIONS	21 17
BALANCE DUE	1318 04

Ev F

RB

(2-L)

I hereby certify that the men above named have been employed in the service of this Company and that the time and rates shown above are correct.

C. L. McKee

Dept. or Foreman

56

SEMI-MONTHLY TIME SHEET — HELMERICH & PAYNE, INC.

Helmerich and Payne — School Land — Well No. C-7 — Survey No. 8

Contract Drilling Name — Name of Lease — Well No. — Survey No.

2-2 ending 5-15-41 — Foreman L. L. McKee

Height of ... 194

NAME	OCCUPATION	7 8 9 10 11 12 13 14 15 16 17	Total Hrs	RATE S.T.	RATE O.T.	AMOUNT
Jack Nelson	Driller		170			170.66
W. C. Silas	Helper		97½			104.96
Gordon Ryder	"		97½			104.96
Carl Robinson	"		97½			104.96
L. L. McKee	Driller		175			175.00
R. D. Howard	Helper		97½			104.96
Leroy Smith	"		97½			104.96
Frank Hyde	Mechanic		54			58.04
E. F. Webb	Driller		170			182.66
A. T. Griffin	Helper		170			114.80
R. L. Parker	"		170			114.80
Ezra Gibson	"		170			114.80
Tom Ewing	"		93			39.36
Otto Knight	Tool Pusher		168			63.70

DEDUCTIONS

NAME	Ded. No.	Amount
L. L. McKee	2	7.00
Frank Hyde	1	3.73
E. F. Webb	1	7.00
OAB		15.00
		3.73

4-11-X-41 OFFICE DISTRIBUTION: School Land C-7 Okla

	AMOUNT
TOTAL PAY ROLL	1553.28
TOTAL DEDUCTIONS	25.28
BALANCE DUE	1528.00

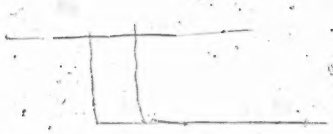
Okla.

Ex F

2-M

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

L. L. McKee
Name of Foreman



STANDARD FORM [182A] PER SALE BY MID-WEST PTG. CO TULSA, OKLAHOMA

(1)

REGISTRATION NO. 437-10-9728 **LABOR TIME SHEET** Dec 1-15 1935

NAME Homer A. Farrar AT Galva Kans.

DAY	HRS	RATE	AMOUNT	WORK DONE	CHARGE
1	6		$6250	Pumper 4 Wells - Russell B	Russell B-59
2	6		"	1 Well - Russell 5A	"
3	6		"	"	"
4	6		"	"	"
5	6		"	"	"
6	6		"	"	"
7	6		"	"	"
8	6		"	"	"
9	6		"	"	"
10	6		"	"	"
11	6		"	"	"
12	6		"	"	"
13	6		"	"	"
14	6		"	"	"
15	6		"	"	"
16					
17					
18					
19				Russell 5A 1 x 60 =	
20				" B 50.00 =	
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
TOTAL 5			$6250		

(1-A)

DEDUCTIONS 1 x 60

O A B 63

AMOUNT DUE 6187

CERTIFICATE

THE TIME AND RATE AS SHOWN ON THIS SHEET IS CORRECT AND REPRESENTS ALL TIME PUT IN BY ME IN THE SERVICE OF THIS COMPANY FOR THE MONTH OF

Dec 15 1935

SIGNED Ex G

APPROVED John McMasters APPROVED

STANDARD FORM [182A] FOR SALE BY MID-WEST PTG. CO. TULSA, OKLAHOMA

REGISTRATION No 437-10-9776 **LABOR TIME SHEET** March 1-15 (10) 39

NAME Homer J. Farrar AT Galva, Kans.

DAY	HRS	RATE	AMOUNT	WORK DONE	CHARGE
1	6			Pumper 4 Wells - Russell B	Russell B - 5A
2	6			1 Well - Russell 3A	
3	6				
4	6				
5	6				
6	6				
7	6				
8	6				
9	6				
10	6				
11	6				
12	6				
13	6				
14	6				
15	6				
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
TOTAL	85		$65.00		

(1-B)

DEDUCTIONS 6.50

O.A.B. .65

AMOUNT DUE 64.35

CERTIFICATE

THE TIME AND RATE AS SHOWN ON THI[S] CORRECT AND REPRESENTS ALL TIME PUT IN BY ME IN THE SERVI[CE] COMPANY FOR THE MONTH OF

March 15 39

SIGNED Eq G

APPROVED John McMasters APPROVED

STANDARD FORM [182A] FOR SALE BY MID-WEST PTG. CO. TULSA, OKLAHOMA

REGISTRATION NO 437-10-3796 **LABOR TIME SHEET** June 1 - 15 (5) 1939

NAME Homer J. Farrar AT Galva, Kans.

DAY	HRS	RATE	AMOUNT	WORK DONE	CHARGE
1	6			Pumper 4 Wells - Russell B	Russell B - 50 # 13 ⁰⁰
2	6			" 1 Well - Russell SB	
3	6			"	
4	6			"	
5	6			"	
6	6			"	
7	6			"	
8	6			"	
9	6			"	
10	6			"	
11	6			"	
12	6			"	
13	6			"	
14	6			"	
15	6			"	
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
TO 15			$65 00		(1-B)

DEDUCTIONS		
	65	00
OAB		65
AMOUNT DUE	64	35

CERTIFICATE

THE TIME AND RATE AS SHOWN ON THIS SHEET IS CORRECT AND REPRESENTS ALL TIME PUT IN BY ME IN THE SERVICE OF THIS COMPANY FOR THE MONTH OF June 15 1939

Ex G

APPROVED J. L. Martin APPROVED

HELMERICH & PAYNE, INC.

LABOR TIME SHEET

Exh (11)

NAME Homer J. Farrar

ADDRESS Galva, Kansas

FOR First HALF OF December 1940 REGISTRATION NO 437-10-9796

DATE	KIND OF WORK DONE		CHARGE	HOURS	RATE	AMOUNT
1 16	Pumping Wells	4 Wells -- Russell B.	Russell B-5A	10		
2 17	Pumping Wells	1 Well -- Russell 5A	Russell B-5A	10		
3 18	Pumping Wells		Russell B-5A	10		
4 19	Pumping Wells		Russell B-5A	10		
5 20	Pumping Wells		Russell B-5A	10		
6 21	Pumping Wells		Russell B-5A	10		
7 23	Pumping Wells		Russell B-5A	10		
8 23	Pumping Wells		Russell B-5A	10		
9 24	Pumping Wells		Russell B-5A	10		
10 25	Pumping Wells		Russell B-5A	10		
11 26	Pumping Wells		Russell B-5A	10		
12 27	Pumping Wells		Russell B-5A	10		
13 28	Pumping Wells		Russell B-5A	10		
14 29	Pumping Wells		Russell B-5A	10		
15 30	Pumping Wells		Russell B-5A	10		
31						

DEDUCTIONS NAME	SHIFT NO.	AMOUNT
Home Rent		5 00
Drug		2 58
O.A.B.		65
TOTAL		8 23

Russell B 5x.00/ -5A. 15.00/

TOTAL PAYROLL 65 00

OFFICE USE ONLY

TOTAL DEDUCTIONS 8 23

BALANCE DUE 56 77

CERTIFICATE

THE TIME AND RATE AS SHOWN ON THIS SHEET IS CORRECT AND REPRESENTS ALL TIME PUT IN BY ME IN THE SERVICE OF THIS COMPANY FOR THE MONTH OF Dec. 15 1940

SIGNED

APPROVED John McMasters OFFICE APPROVED 1-E SUPT

49

HELMERICH & PAYNE, I. ..

LABOR TIME SHEET

Eq H (11)

NAME Homer d. Farrar

ADDRESS Galva, Kans.

FOR First HALF OF April 1941 REGISTRATION NO 437-10-9796

DATE	KIND OF WORK DONE		CHARGE	HOURS	RATE	AMOUNT
1 10	Pumping Wells	4 Wells --- Russell B	Russell B-C-5A	14		
8 17	Pumping Wells	5 Wells --- Russell C	Russell B-C-5A	10		
8 18	Pumping Wells	1 Well --- Russell 5A	Russell B-C-5A	10		
8 19	Pumping Wells		Russell B-C-5A	10		
8 20	Pumping Wells		Russell B-C-5A	10		
8 21	Pumping Wells		Russell B-C-5A	10		
7 22	Pumping Wells		Russell B-C-5A	10		
8 23	Pumping Wells		Russell B-C-5A	10		
8 24	Pumping Wells		Russell B-C-5A	10		
10 25	Pumping Wells		Russell B-C-5A	10		
11 26	Pumping Wells		Russell B-C-5A	10		
12 27	Pumping Wells		Russell B-C-5A	10		
13 28	Pumping Wells		Russell B-C-5A	10		
14 29	Pumping Wells		Russell B-C-5A	10		
15 30	Pumping Wells		Russell B-C-5A	10		
31						

DEDUCTIONS NAME	SHIFTS	AMOUNT
Social		258
OAB		78
TOTAL		336

14 Russell B 31.98 ✓
" C 38.75 ✓
5-A 7.75 ✓

TOTAL PAYROLL 77.50

OFFICE USE ONLY

TOTAL DEDUCTIONS 336

BALANCE DUE 7414

CERTIFICATE

THE TIME AND RATE AS SHOWN ON THIS SHEET IS CORRECT AND REPRESENTS ALL TIME PUT IN BY ME IN THE SERVICE OF THIS COMPANY FOR THE MONTH OF April 15 1941

SIGNED

APPROVED J. Timmerman

OFFICE APPROVED

SUPT

[Exhibit 1.]

#17

Helmerich & Payne, Inc.

Full Time Lease Pumper's Contract.

Place Galva Kns Date 10-6-41

Helmerick & Payne, Inc., 415 Philtower, Tulsa, Oklahoma,

Attention: Production Superintendent No. P 33

Gentlemen: I hereby accept employment with you as a full time lease pumper to pump and look after your Russell-B-C-5A Lease in McPherson, Kns County, McPherson, on the following wage scale and conditions, to-wit:

1. You will pay me $38.93 per week, payable bi-weekly (every two weeks).

(A) You will permit me to use, as long as I am in your employ on said lease, the lease house (as is) on said lease, if same is available, and also permit me, at my own risk, cost and expense, to use for my domestic purposes only, such gas as is in your sole discretion available from such lease; and also furnish lights for said house if same are (in your discretion) available at reasonable domestic rates and without cost to you of extending lines; for which I agree to pay you the sum of $2.00 per week, which you may deduct from my pay check.

2. I agree to promptly make written, signed daily reports to your home office, 415 Philtower, Tulsa, Oklahoma, of all my work time while in your employ, and it is understood that you may terminate my employment at any time, either with or without cause, and either with or without notice, as you may in your uncontrollable discretion from time to time determine, in which event I agree to promptly and immediately vacate the premises in its original condition, ordinary wear and tear excepted.

3. The number of hours which I work on this lease will, no doubt, vary to some little extent from week to week. Under the Federal Fair Labor Standards Act my pay may not be less than thirty (30) cents per hour for the first 40 hours in each said work week, and forty-five (45) cents per hour thereafter in said work week. Except as otherwise

hereinafter provided I am not being employed on a specific rate per hour, but I am being employed with the understanding that the above indicated pay shall completely cover and include (subject to Paragraph 4) my regular time and overtime in each work week, and that my regular hourly rate per each work week shall be determined each said work week by the following formula:

Let X equal my regular or base hourly wage for each work week. X shall then be determined by multiplying X by the number of hours in each week which I work up to the first 40 and adding to it the number of hours worked in said work week in excess of said 40 hours times 3X 2, which shall equal the compensation I receive for that week.

In other words, if, for the first week I work, I receive the sum of $30.00, and I worked 50 hours in that week, my regular hourly rate scale for that week would be determined as follows:

40X plus 15X equal $30.00, or 55X equals $30.00; X equals $0.54 plus, my base or regular hourly wage for that week.

I am to be paid one and one-half times my regular hourly rate for each work week for all hours in said work week in excess of 40 hours.

4. It is further agreed that in the event the weekly regular hourly wage, determined in accordance with the above indicated formula and agreement, shall in any work week equal less than 30 cents per hour, then 30 cents per hour shall be the regular hourly wage for the first 40 hours worked in that week, and 45 cents per hour shall be the overtime hourly wage for all hours in said week in excess of the 40. Also, only such time as I may actually spend in actually working on said lease as a pumper shall be considered as my work time for which you are obligated to pay me. All time spent at home, sleeping, and for meals, away from the lease, working around my house or in the garden, working for myself or others, etc., shall not be charged to you.

This agreement shall cancel any and all prior agreements between us (if any). There are no other oral or written understandings regarding this agreement, or my employment.

H. J. FARRAR, Employee.

Accepted on above date:

HELMERICH & PAYNE, INC.,
By JOHN MCMASTERS,
Company's Representative. (1-B)

HELMERICH & PAYNE, INC.

LABOR TIME SHEET

EXJ (151)

NAME H. J. FARRAR

ADDRESS GALVA, KNS.

PERIOD FROM March - 16 1942 TO March - 29 1942 SOCIAL SECURITY NO 437-10-9796

OCCUPATION LEASE PUMPER X ROUSTABOUT ☐ CABLE DRILLER ☐ TOOL DRESSER ☐ OTHERS

DATE		WORK DONE			LEASE CHARGE	REG HOURS	O T HOURS	RATE	AMOUNT
16	MON	Pumping	Wells	5 Wells Russell C	Russell-B-B-5A	10			
17	TUE	Pumping	Wells	4 wells Russell B	Russell-B-C-9A	10			
18	WED	Pumping	Wells	1 Well Russell B	Russell-B-C-5A	10			
19	THU	Pumping	Wells		Russell-B-C-5A	10			
20	FRI	Pumping	Wells		Russell-B-C-5A		10		
21	SAT	Pumping	Wells		Russell-B-C-5A		10		
22	SUN	Pumping	Wells		Russell-B-C-5A		10		
23	MON	Pumping	Wells		Russell-B-C-5A	10			
24	TUE	Pumping	Wells		Russell-B-C-5A	10			
25	WED	Pumping	Wells		Russell-B-C-5A	10			
26	THU	Pumping	Wells		Russell-B-C-5A	10			
27	FRI	Pumping	Wells		Russell-B-C-5A		10		
28	SAT	Pumping	Wells		Russell-B-C-5A		10		
29	SUN	Pumping	Wells		Russell-B-C-5A		10		
X-14	X-14	Russell	a	38.93	TOTAL PAYROLL REG	80		458	36 64
			B	31.12	O T		60	687	41 22
			C	7.79	TOTAL EARNINGS	80	60		77 86

I HEREBY CERTIFY THAT THE ABOVE IS A CORRECT STATEMENT OF ALL TIME WORKED BY ME IN THE SERVICE OF THIS COMPANY DURING THE PERIOD SHOWN

SIGNED W J Farrar

(MUST BE PERSONALLY SIGNED BY EMPLOYEE)

SIGNED THIS 29 DAY OF March 1942

APPROVED

APPROVED

DEDUCTIONS — AMOUNT

PAID BY DRAFT NO.	
LEASE HOUSE RENTALS	
FEDERAL O A B TAX	78
OTHERS	
TOTAL DEDUCTIONS	78
BALANCE DUE	77 08

(1-8)

57

SEMI-MONTHLY TIME SHEET

Company Owning Lease: Frank Driver & Helpers — Name of Lease — Well No. — Company No. 70

First Half Month of December 1948 — Foreman J.T.M.

NAME	OCCUPATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total No. Days	RATE	AMOUNT
K O Farmer	Drlr #3																15	165.00	82 50
Frank Wilson	Drlr #1																15	165.00	82 50
J R Haney	Drlr 8																15	165.00	82 50
Floyd Graham	Drlr 14																15	165.00	82 50
Jack Sisk	Helper #13																15	5.00	75 00
Jim Kelehan	Helper #14																15	5.00	75 00
Jimmy Garrett	Helper #8																15	5.00	75 00

abla 750 / 450.00 / Drlr

DEDUCTIONS			
NAME	Ded'n.	Amount	
Jimmy Garrett	Loan	5 00	Pay J.T.M.
O.A.B.		5 57	

TOTAL PAY ROLL	553 00
TOTAL DEDUCTIONS	557
BALANCE DUE	54443

3-A

Ex K

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

J. T. Musgrove
Supt. or Foreman

Standard Form Commercial Pay Co.

SEMI-MONTHLY TIME SHEET

Company

Company Owning Lease: First

Name of Lease: Trucks

Well No.

Half Month of: April 1940

Foreman: Herman Alves

NAME	OCCUPATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total No. Days	RATE	AMOUNT
T Farias	Truck #24	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	15	4.50	67.50
J B Waldron	Lease #24	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/	15	5.00	75.00

DEDUCTIONS

NAME	Draft No.	Amount
O A B		1.52

X-17

TOTAL PAY ROLL	157.50
TOTAL DEDUCTIONS	1.52
BALANCE DUE	155.98

3-B

Ey X

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

Herman Alves

Supt. or Foreman

SEMI-MONTHLY TIME SHEET

Company Owning Lease: Helmerich & Payne Inc Contractor

Name of Lease: [redacted] Well No. 14 Casing No.

First Half Month of August 1940 Foreman Farrest Roper

NAME	OCCUPATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total No. Days	RATE	AMOUNT
J.M. Woods	Truck 19	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	15	12 00	87 50
V.A. McCraw	Swamp 19	X	X	X	X	X	X	X	X	X	X	X	X	X	X		15	150 00	25 00
BB Robinson	Truck 16	X	X	X	X	X	X	X	X	X	X	X	X	X	X		15	165 00	82 50
G.C. Gardner	Swamp 26	X	X	X	X	X	X	X	X	X	X	X	X	X	X		15	150 00	25 00
M.L. Wright	Truck 21	X	X	X	X	X			X	X	X	X	X	X	X		13	150 00	71 50
W. Smith -	Swamp 21	X	X	X	X	X					X	X	X	X	X		11	150 00	
W. Smith -	Truck 5						X	X	X	X							4	150 00	77 00
Harold Byerly -	Truck 5	X	X	X	X	X					X	X	X	X	X	X	11	150 00	
Harold Byerly -	Truck 21						X	X	X	X							4	150 00	82 50
Ray Smith	Swamp 5	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	15	150 00	25 00
Bryan Moffett	Truck 20	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	15	165 00	82 50
Shirley Blythe	Swamp 20	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	15	150 00	75 00

DEDUCTIONS

NAME	Draft No.	Amount
M.L. Wright	2	2 73
Harold Byerly	✓	2 90
Bryan Moffett	✓	2 00
B.B. Robinson	✓	1 00
O.A.B.		7 86
		16 49

TOTAL PAY ROLL	783 00
TOTAL DEDUCTIONS	16 49
BALANCE DUE	767 01

BC

X17 Jake Ep

Ex K

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

Farrest Roper
Supt. or Foreman

SEMI-MONTHLY TIME SHEET

Company Owning Lease: Sinclair — Name of Lease: Frank Owens — Company: 10 — Well No. — String No.

First Half Month of Nov 1940 — Foreman

NAME	OCCUPATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total No. Days	RATE		AMOUNT
Clair Wilson	Tk Gauger	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	180	75 105	25 35	87.50
J R Haney	" "	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	180	75 105	25 35	87.50
Wess Ketchum	Helper	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	180	75 105	25 35	75.00
Clarence S Wilson	"	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	180	75 105	25 35	75.00

DEDUCTIONS

NAME	Draft No.	Amount
O.A.B.		3.16

X17 — Okla

TOTAL PAY ROLL	315.00
TOTAL DEDUCTIONS	3.16
BALANCE DUE	311.84

3-E

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

J M Burgess
Supt. or Foreman

"Exhibit L"

76

SEMI-MONTHLY TIME SHEET — HELMERICH & PAYNE, INC.

Frank Ry Lodge

Track F-25

Name of Lease

Well No. — Rig No.

Last Half Month of April 1941 — Foreman A.R. Coleman

NAME	OCCUPATION	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total Hrs.	S.T. O.T.	RATE S.T.	RATE O.T.	AMOUNT
Frank Ritchey	Driller	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	120				84.60
L.P. Martin	Helper	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	120				75.00

3-7

DEDUCTIONS

NAME	Deduction No.	Amount
O.A.B.		1.53

OFFICE DISTRIBUTION

7-17

N Mex

AMOUNT		
157.60	TOTAL PAY ROLL	157.60
	TOTAL DEDUCTIONS	1.63
	BALANCE DUE	155.97

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

A.R. Coleman
Dept. or Foreman

"Exhibit 4"

SEMI-MONTHLY TIME SHEET — HELMERICH & PAYNE, INC. — 3

Truck #25.

Last Half Month of May 1941 Foreman A.R. Coleman

NAME	OCCUPATION	7 8 9 10 11 12 1 2 3 4 5 6 7	Total Hrs.	RATE S.T.	RATE O.T.	AMOUNT
Frank Wilson.	Driver.	10 10 10 9 2 15 7 12 8 11 14 8 11 14	167			80 80
M. H. Smith	Helper.	10 10 10 8 2 15 7 12 8 11 14 8 11 14	167			74 00

DEDUCTIONS

NAME	Dwk No.	Amount
O.A.B.		155

OFFICE DISTRIBUTION

K-17 2nd approx

3-I

AMOUNT		
	TOTAL PAY ROLL	154 80
	TOTAL DEDUCTIONS	155
	BALANCE DUE	153 79

Ex M

I hereby certify that the men above named have been employed in the service of this Company and that the time and rates shown above are correct.

A.R. Coleman
Supt. or Foreman

LABOR TIME SHEET

HELMERICH & PAYNE, INC.

64

Common Owning Lease

Name of Lease or Well: Hemrick

Well No.

Survey No.

Permit From 3 - 2 1942 To 3 - 15 1942 Foreman Herman Owens

Name of Lease or Well

Well No.

Rig No.

NAME	OCCUPATION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total Hours	RATE	AMOUNT	TOTAL EARNINGS
Byron Shattuck	Truck 38	9	8	8	0	9	10	9	10	8	10	10	10	8	10	120	.64	76.80	
Ernest Robertson	Swamper 38	9	8	8	0	9	10	9	10	8	10	10	10	8	10	120	.55	66.00	80.80
W.E. Smith	Truck 40	10	8	0	11	5	13	10	8	9	10	8	10	8	10	130	.64	83.20	74.40
Mort Cuddihee	Swamper 40	10	8	0	11	5	13	10	8	9	10	8	10	8	10	130	.55	71.50	71.50

OFFICE DISTRIBUTION	AMOUNT
X-17 Truck expense Okla	30.60

DEDUCTIONS		TOTAL PAYROLL
Name of Item	Check No. - Amount	
O & B	3.10	

Eq M Okla

Employee's Position O. K.

I hereby certify that the men above named have been employed in the service of this Company, and that the time and rates shown above are correct.

Herman Owens

SUPT. OR FOREMAN

3-14

Total Advertising 3.10

BALANCE DUE 30.60

Findings of Fact and Conclusions of Law.

131 The court having heard the evidence and argument of counsel in this cause, and being fully advised in the premises, hereby makes the following findings of fact and conclusions of law.

Findings of Fact.

I.

The defendant is a corporation organized and existing under the laws of the State of Delaware, and has a permit to do business in the State of Oklahoma, its principal offices being located in the City of Tulsa, Tulsa County, Oklahoma. The corporate setup of the defendant was altered subsequent to October 24, 1938, (the effective date of the Fair Labor Standards Act of 1938), hereinafter referred to as the Act), but the parties have stipulated and the court finds that such alteration may be disregarded for the purpose of the disposition of this case. The business of the defendant consists of the drilling of oil and natural gas wells, both under contract with other concerns and individuals and for its own account, and the production of crude petroleum, oil and natural gas from wells drilled on properties owned or leased by it. Most of the drilling operations are performed for others. Both drilling and producing operations are performed in various states, including Oklahoma, Texas, New Mexico and Illinois.

II.

Substantially all of the oil and gas produced from wells drilled by the defendant, whether for others or on its own account, moves into the channels of interstate commerce, either in its crude form or as products.

III.

132 In the prosecution of its various activities the defendant employs an average of approximately 400 employees in the production of goods for commerce or in processes or occupations necessary thereto. Of this number, approximately 305 are normally employed in drilling operations and occupations necessary and incidental thereto; approximately 70 are normally employed in production activities and occupations necessary and incidental thereto;

and approximately 25 are employed in clerical work in connection with both the drilling and producing activities of the defendant.

IV.

During the period beginning October 24, 1938, and extending up to and including the date of the trial of this case, the defendant has employed its employees under various contracts of employment, some of which contracts were written and some oral, providing for various wage plans as will be hereinafter found. The underlying purpose and the practical effect of these respective wage plans effective prior to July 15, 1941, were to maintain employees' wages *as* same level as before the Act went into effect.

V.

During the period of time from October 24, 1938, to October 16, 1939, the defendant's drilling employees; that is, rotary drillers, rotary helpers, roustabouts, water pumpers, and watchmen, were employed under a wage plan or contract which was evidenced by a written endorsement stamped on the back of each pay check issued to each such employee during the period mentioned. This written endorsement was as follows:

"By endorsement of this check employee acknowledges that from 11/1/38, he is employed by Helmerich & Payne, Inc., on the following wage scale:

The base or regular rate per hour shall be paid for the first 4 hours in each 8 hour tour, and hours (in each said 8 hour tour) in excess of the four shall be paid for at 1½ times base or regular rate. Base rate shall never apply to more than 44 hours in any calendar week.

133 Base or regular rates are as follows:

Rotary Drillers	$1.10
Rotary Helpers	.70
Roustabouts	.48
Water Pumpers	.45
Watchmen	.28

If your particular work does not come under the above classifications, consult your foreman for your rate."

The result of this method of payment was that each of these employees continued to receive the same wages for a like amount of work as they received before the effective date of the Fair Labor Standards Act of 1938, hereinafter called the Act.

VI.

The wage plan mentioned in paragraph V above (modified to provide that base pay should not be paid for more than 42 hours in any calendar week) was continued in effect as to the classes of employees named during the period of time from October 16, 1939, to October 1, 1940, the respective basic hourly rates remaining the same as to all such employees except watchmen, whose basic hourly rate was increased from twenty-eight (28) cents to thirty (30) cents per hour.

VII.

During the period of time mentioned in Paragraphs V and VI above, the employees therein mentioned regularly worked hours in excess of the applicable maximum per workweek as provided in Section 7 of the Act, and during such period received only such compensation as was provided in the endorsement referred to.

VIII.

During the period of time from October 24, 1938, to October 1, 1940, the defendant employed its lease pumpers and switchers, and also its truck drivers and helpers, under oral contracts of employment providing in the case of each such employee for a fixed *monthly* salary irrespective of the number of hours worked during any workweek. During this period of time such employees frequently worked hours in excess of the maximum prescribed by the Act, each such employee receiving only his fixed monthly salary re-
134 gardless of the number of hours worked, but said monthly salary always exceeded the statutory minimum wages both as to time and overtime, which said employee would have received if he had been paid by the hour.

IX.

During the period of time from October 1, 1940, to July 15, 1941, the defendant employed its drilling and production employees; that is, rotary drillers, rotary helpers, cable

drillers, tool drillers, mechanics, roustabouts, water pumpers, watchmen, truck drivers, swampers, and lease pumpers under written contracts of employment. A typical example of such contracts is the following:

Employment Contract No. 529.

Place Salem, Illinois Date Sept. 4, 1940

Helmerich & Payne, Inc., 415 Philtower, Tulsa, Oklahoma.

Gentlemen: I hereby accept employment with you as a Rotary Helper upon the following wage scale and conditions, to-wit:

The base or regular rate per hour for employees coming under classifications 1, 2, 3, 4, 5, 6, 7 and 10 below shall be paid for the first 4 hours in each 8 hour tour and hours (in each said 8 hour tour) in excess of the 4 shall be paid for at 1½ times said base or regular rate.

The base or regular rate per hour for employees under classifications 9, 11, and 12 below shall be paid for the first 5 hours in each 12 hour tour and hours (in each said 12 hour tour) in excess of the 5 shall be paid at 1½ times base or regular rate.

The base or regular rate per hour for employees under classification 8 noted below shall be paid for the first 5 hours in each 10 hour tour and hours (in each said 10 hour tour) in excess of the 5 shall be paid for at 1½ times base or regular rate.

In event each monthly compensation of any employee of the following classifications:

Lease Pumpers	(classification No. 8)	$130.00
Truck Drivers	(classification No. 11)	165.00
Swampers	(Classification No. 12)	150.00

does not equal the sum hereinabove set opposite the same, the Company will advance said employee the difference which shall apply on future overtime payments; adjustment to be made on January 1st of each year and when said employment ceases.

Base or regular hourly rates are as follows:

Classification	1 Rotary Driller	$1.10
"	2 Rotary Helpers	.70
"	3 Cable Driller	1.00
"	4 Tool Dresser	.80
Classification	5 Mechanics	.70
"	6 Roustabouts (in Kansas & Texas)	.48
"	7 Water Pumpers	.45
"	8 Lease Pumpers	.34
"	9 Watchmen	.30
"	10 Roustabouts (in Okla. & Illinois)	.50
"	11 Truck Drivers	.35
"	12 Swampers	.32

135 Base rate shall never apply to more than 40 hours in any work week.

I agree to make daily reports to your home office at 415 Philtower, Tulsa, Oklahoma, of all my work time while in your employ.

It is understood that you may terminate my employment at any time either with or without cause and either with or without notice as you may in your uncontrollable discretion from time to time determine.

W. E. BECHTEL, Employer.

Witnesseth:

CHAS. STALEY, Company's Representative"

During the period of time when these contracts were in effect, no sums advanced to any employee in accordance with the provisions thereof were ever repaid, and the defendant never had any accounting with any such employee with reference thereto.

While these contracts were in effect, the employees who parties thereto frequently worked hours in excess of the maximum prescribed by Section V of the Act, and received therefor such compensation as was provided by the contracts.

X.

During the period of time from July 16, 1941, to the date of trial, the defendant employed its drilling employees un-

der written contracts of employment. A typical example of such contracts is the following:

"Helmerich & Payne, Inc.

General Employment Contract.

Place South Maud . Dated 9/28/41

Helmerich & Payne, Inc., 415 Philtower, Tulsa, Oklahoma.

No. G 726

Gentlemen: I hereby accept employment with you as a Rotary Driller upon the following wage scale and conditions, to-wit:

136 1. The base or Regular rate per hour for all classes of employees covered by this contract shall be paid for the first 40 hours worked in each calendar week and all hours in said week in excess of said 40 shall be paid for at one and one-half times said Base or Regular rate. Wages shall be paid bi-weekly, (every 2 calendar weeks).

2. In the event any said bi-weekly compensation of any employee of the following classifications:

Truck Drivers	Classification 7	$80.00
Swampers	Classification 8	74.00
Tanden Truck Drivers	Classification 9	92.30

does not equal the sum hereinbefore set opposite the same, the company may advance and loan said employee the difference, which shall apply on future overtime payments; adjustments and accounting to be made on the first day of each year (or sooner if the company desires) and/or when said employment ceases.

3. Base or Regular hourly rates are as follows:

Classification 1 Rotary Driller.	$1.33 1/3
Classification 2 Rotary Helper, except in Ill	.82
Classification 3 Cable Driller	1.25
Classification 4 Tool Dresser	1.00
Classification 5 Rotary Helper in Illinois	.85
Classification 6 Roustabouts	.58
Classification 7 Truck Drivers	.46
Classification 8 Swampers	.42
Classification 9 Tandem Truck Drivers	.52

'Rotary Helper', under Classifications 2 and 5 shall mean and include Derrick Men, Floor Men, Motor Men and Mechanics.

4. Time spent by employees under Classifications 7, 8 and 9, in going to and from work, sleeping, eating, going to and from meals, doing work for themselves and others, shall not for any purpose be considered work time.

5. If, in any calendar week, employee shall work under other than his original classification, his pay for that work time shall be determined, both for regular time and over-time so worked, on the above stated rate for that classification.

6. I agree to make written, signed daily reports to your home office, 415 Philtower, Tulsa, Oklahoma, of all my work time while in your employ.

7. It is understood that this agreement shall be effective (as to present employees executing same) as of and from July 16, 1941; that there are no oral or written understandings regarding same and it shall cancel any and all prior agreements between us (if any). You may terminate my employment at any time, either with *our* without cause, and either with or without notice, as you may in your uncontrollable discretion from time to time determine.

H. H. Rich, Employee.

Accepted on Above Date:

Helmerich & Payne, Inc.,
By C. L. McKee, Company's Representative.

137 During the period of time while these contracts were in effect no sums advanced in accordance with the provisions thereof were ever repaid to the defendant and no accounting was ever had with respect thereto.

During the period of time while these contracts were in effect, the employees who were parties thereto frequently workd hours in excess of the maximum per workweek as prescribed by Section 7 of the Act, and received therefor only such compensation as was provided for in such contracts. They occasionally worked such hours as would *entitled* them to compensation in excess of the amounts actually received.

XI.

During the period from July 16, 1941, to the date of the trial, the defendant employed its lease pumpers under written contracts of employment. A typical example of such employment contracts is the following:

"Helmerich & Payne, Inc.

Full Time Lease Pumper's Contract.

Place Galva, Kns. Date 10-6-41

Helmerich & Payne, Inc., 415 Philtower, Tulsa, Oklahoma.

No. P 33

Attention: Production Superintendent

Gentlemen: I hereby accept employment with you as a full time lease pumper to pump and look after your Russell-B-C-5A Lease ....., in McPherson, Kns., County, McPherson, on the following wage scale and conditions, to-wit:

1. You will pay me $38.93 per week, payable bi-weekly (every two weeks).

(A) You will permit me to use, as long as I am in your employ on said lease, the lease house (as is) on said lease, if same is available, and also permit me, at my own risk, cost and expense, to use for my domestic purposes only, such gas as is in your sole discretion available from such lease; and also furnish lights for said house if same are (in your discretion) available at reasonable domestic rates and without cost to you of extending lines; for which I agree to pay you the sum of $2.00 per week, which you may deduct from my pay check.

138 2. I agree to promptly make written, signed daily reports to your home office, 415 Philtower, Tulsa, Oklahoma, of all my work time while in your employ, and it is understood that you may terminate my employment at any time, either with or without cause, and either with or without notice, as you may in your uncontrollable discretion from time to time determine, in which event I agree to promptly and immediately vacate the premises in its original condition, ordinary wear and tear excepted.

3. The number of hours which I work on this lease will, no doubt, vary to some little extent from week to week. Un-

der the Federal Fair Labor Standards Act my pay may not be less than thirty (30) cents per hour for the first 40 hours in each said work week, and forty-five (45) cents per hour thereafter in said workweek. Except as otherwise hereinafter provided I am not being employed on a specific rate per hour, but I am being employed with the understanding that the above indicated pay shall completely cover and include (subject to Paragraph 4) my regular time and overtime in each work week, and that my regular hourly rate per each work week shall be determined each said work week by the following formula:

> Let X equal my regular or base hourly wage for each work week. X shall then be determined by multiplying X by the number of hours in each week which I work up to the first 40 and adding to it the number of hours worked in said work week in excess of said 40 hours time 3X/2, which shall equal the compensation I receive for that week.

In other words, if, for the first week I work, I receive the sum of $30.00, and I worked 50 hours in that week, my regular hourly rate scale for that week would be determined as follows:

> 40X plus 15X equal $30.00, or 55X equals $30.00; X equals $0.54 plus, my base or regular hourly wage for that week.

I am to be paid one and one-half times my regular hourly rate for each work week for all hours in said work week in excess of 40 hours.

4. It is further agreed that in the event the weekly regular hourly wage, determined in accordance with the above indicated formula and agreement, shall in any work week equal less than 30 cents per hour, then 30 cents per hour shall be the regular hourly wage for the first 40 hours worked in that week, and 45 cents per hour shall be the overtime hourly wage for all hours in said week in excess of the 40. Also, only such time as I may actually spend in actually working on said lease as a pumper shall be considered as my work time for which you are obligated to pay me. All time spent at home, sleeping, and for meals, away from the lease, working around my house or in the

garden, working for myself or others, etc., shall not be charged to you.

This agreement shall *cancell* any and all prior agreements between us (if any). There are no other oral or written understandings regarding this agreement, or my employment.

H. J. FARRAR, Employee.

Accepted on above date:
HELMERICH & PAYNE, INC.,
By 6 JOHN MCMASTERS,
Company's Representative."

During such period of time the employees who were parties to such contracts frequently worked hours in excess of the maximum per workweek prescribed by Section 7 of the Act, receiving therefor only such compensation as was provided for in said contracts.

139 That at *lease* some of the employees employed under the contracts mentioned above were not able to fully and clearly interpret the meaning of such 'X-formula contract' and did not clearly understand what their regular hourly rate of pay was thereunder. They understood however, that their wages were to remain the same each week, regardless of hours worked, and further understood and agreed that the pay they were getting was to include and cover both their regular time and overtime for each workweek.

XII.

The parties hereto having filed stipulations of facts in this cause, such stipulations are hereby adopted and made a part of these findings.

Conclusions of Law.

I.

I conclude that the defendant has been and is employing its employees in the production of goods for interstate commerce or in processes or occupations necessary to such production within the meaning of the Fair Labor Standards Act of 1938.

II.

I conclude, in view of the decision of the Supreme Court in the case of Walling v. A. H. Belo Corporation, 62 Sup. Ct. 1223, that employees of the defendant employed pursuant to the contracts set forth in Paragraphs V, VI, IX, X, and XI of the Findings of Fact herein have been employed in compliance with the requirements of Section 7 of the Fair Labor Standards Act of 1938, in that all such contracts provide "base or regular hourly" rates of pay and overtime at time and one-half thereon.

III.

I conclude, in view of the decision of the Supreme Court in the case of Overnight Motor Transportation Co. v. Missel, 62 Sup. Ct. 1216, that the employees of the defendant employed pursuant to the contract set forth in Paragraph VIII of the Findings of Fact herein have been employed in violation of the requirements of Section 7 of the Fair Labor Standards Act of 1938, in that such contract fails to provide for the payment of overtime compensation at one and one-half times the employees' regular rate of pay.

IV.

140 The plaintiff is not entitled to an injunction in this cause except to the extent of restraining defendant from paying any of its employees in the manner prescribed in Paragraph VIII of the Findings of Fact.

Dated this 4 day of Dec., A. D. 1942.

ROYCE H. SAVAGE,
United States District Judge.

Endorsed: Filed Dec. 4, 1942. H. P. Warfield, Clerk, U. S. District Court.

Judgment.

141 This cause came on for trial on the 13th day of May, A. D. 1942, on which date it was duly adjourned to the 19th day of September, A. D. 1942, and the plaintiff appearing by his counsel of record, Llewellyn B. Duke and Earl Street, and the defendant, Helmerich & Payne, Inc., a corporation, being present by W. H. Helmerich, its presi-

dent, and Settle, Monett & Clammer, its duly authorized attorneys of record, and the court having heard the evidence and the argument of counsel and being fully advised in the premises, did on the 19th day of September, A. D. 1942, make and enter its findings of fact and conclusions of law, such findings and conclusions being incorporated into this judgment by reference as if fully set out herein; it is therefore

I.

Ordered, Adjudged, and Decreed by the court that the injunction sought by the plaintiff in this cause be, and the same is hereby in all things denied except as hereinafter specified; it is

II.

Ordered, Adjudged and Decreed that the defendant, its officers, agents, servants, employees, attorneys, and all persons acting or claiming to act in its behalf or interest, be, and they are hereby, permanently enjoined and restrained from violating the Fair Labor Standards Act of 1938, hereinafter referred to as the Act, in the following manner:

The defendant shall not, contrary to Section 7 of the Act, employ any of its employees engaged in commerce or in the production of goods for commerce, as defined
142 by the Act, for a workweek longer than 40 hours, unless the employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed; provided, however, that this injunction and restraint shall not be deemed to prohibit the employment and compensation of employees by the defendant pursuant to contracts in the forms set forth in Paragraphs V, VI, IX, X, and XI of the Findings of Fact herein.

III.

The defendant shall not, contrary to Section 15(a)(1) of the Act, ship, deliver, transport, offer for transportation or sell in interstate commerce, as defined by the Act, or ship, deliver, or sell with knowledge that shipment, delivery, or sale thereof in interstate commerce is intended, any goods in the production of which any employee of the defendant has been employed at rates of pay less than those specified in Paragraph II of this judgment;

The defendant shall not fail to make, keep, and preserve records of its employees and of the wages, hours, and other conditions and practices of employment maintained by it, as prescribed by the regulations of the Administrator issued, and from time to time amended, pursuant to Section 11(c) of the Act, and found in Title 29, Chapter V, Code of Federal Regulations, Part 516.

It is further ordered that all costs incurred herein be, and they are hereby, assessed against the defendant.

Dated this 4th day of Dec. A. D. 1942.

ROYCE H. SAVAGE,
United States District Judge.

Endorsed: Filed (Dec. 4, 1942). H. P. Warfield, Clerk, U. S. District Court: Recorded: Journal 5, Page 849.

Notice of Appeal.

143 Notice is hereby given that L. Metcalfe Walling, as Administrator of the Wage and Hour Division, United States Department of Labor, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Tenth Circuit from that part of the judgment entered in this action on the fourth day of December, 1942, which reads:

"1.

"Ordered, Adjudged, and Decreed by the Court that the injunction sought by the plaintiff in this cause be, and the same is hereby in all things denied except as hereinafter specified;"

and from that part of said judgment which reads:

"provided, however, that this injunction and restraint shall not be deemed to prohibit the employment and compensation of employees by the defendant pursuant to contracts

in the forms set forth in Paragraphs V, VI, IX, X, and XI of the Findings of Fact herein."

IRVING J. LEVY, Acting Solicitor,
LLEWELLYN B. DUKE, Regional Attorney,
EARL STREET, Attorney,
United States Department of Labor
Attorneys for Plaintiff.

Post Office Address:

c/o Wage and Hour Division, U. S. Department of Labor, Rio Grande National Building, Dallas, Texas, or c/o Wage and Hour Division, U. S. Department of Labor, Washington, D. C.

Endorsed: Filed February 13, 1943. H. P. Warfield, Clerk, U. S. District Court.

Designation of Record.

146 To the Clerk of the above named Court: In accordance with Rule 75(a) of the Federal Rules of Civil Procedure, you are hereby requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Tenth Circuit, pursuant to the Notice of Appeal filed in the above entitled cause, and to include in such transcript of record the following, which constitutes the complete record and all the proceedings and evidence in this action.

1. Appellant's complaint.

2. Appellee's answer.

3. Stipulation dated January 28, 1942, for substitution of Thomas W. Holland as plaintiff.

4. Order entered January 28, 1942, substituting Thomas W. Holland as plaintiff.

5. Stipulation dated March 25, 1942, for substitution of L. Metcalfe Walling as plaintiff.

6. Order entered March 25, 1942, substituting L. Metcalfe Walling as plaintiff.

7. Stipulation of fact executed by the parties and filed

and introduced in evidence at the trial, including copies of the exhibits attached thereto.

147 8. Complete stenographic transcript of proceedings and evidence had and taken before the Honorable Royce H. Savage, United States District Judge, on May 13, 1942, including a copy of plaintiff's exhibit No. 1.

9. A copy of the final judgment entered by the District Court.

10. A copy of the findings of fact and conclusions of law filed by the District Court.

11. Notice of Appeal with date of filing.

12. Statement of points to be relied upon on appeal.

13. Designation of Record and proceedings to be contained in the record on appeal.

14. Affidavit of service of Designation of Record, and of Statement of Points to be relied upon on appeal.

Said transcript is to be prepared as required by law and the rules of this Court, and the Federal Rules of Procedure, and is to be filed in the office of the Clerk of the United States Court of Appeals for the Tenth Circuit at Denver, Colorado, on or before the 25th day of March, 1943.

IRVING J. LEVY, Acting Solicitor,
LLEWELLYN B. DUKE, Regional Attorney,
EARL STREET, Attorney,
United States Department of Labor
Attorneys for Plaintiff.

Post Office Address:

c/o Wage and Hour Division, U. S. Department of Labor, Rio Grande National Building, Dallas, Texas, or c/o Wage and Hour Division, U. S. Department of Labor, Washington, D. C.

Endorsed: Filed February 13, 1943. H. P. Warfield, Clerk U. S. District Court.

Affidavit of Service of Designation of Record and Statement of Points to be Relied Upon on Appeal.

State of Texas, County of Dallas, ss.

148 Earl Street, of lawful age, being first duly sworn on oath says:

That he is one of the attorneys for L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, and that he did serve a copy of the Designation of Record and proceedings to be contained in the record on appeal, and a true and correct copy of Statement of Points to be Relied Upon on Appeal, on the Honorable Eugene Monette, one of the attorneys of record for the defendant, Helmerich and Payne, Inc., by depositing a true, full, and correct copy of such Designation of Record and proceedings on appeal, and a true and correct copy of such Statement of Points to be Relied Upon on Appeal in the United States mail with postage prepaid addressed to the said Eugene Monette at his office in the Philtower Building in the City of Tulsa, Oklahoma, his last known address.

Further affiant saith not.

EARL STREET.

Subscribed and sworn to before me this 12 day of February, A. D. 1943. E. F. Roberson, Notary Public in and for Dallas County, Texas. (Seal)

Endorsed: Filed February 13, 1943. H. P. Warfield, Clerk, U. S. District Court.

[Transcript of Proceedings.]

93 Be It Remembered, That on this 13th day of May, 1942, the above entitled and numbered cause came on for trial before the Honorable Royce H. Savage, United States District Judge, for the Northern District of Oklahoma, at Tulsa, in said district, whereupon the following proceedings were had and done, to-wit:

Appearances: Mr. Llewellyn B. Duke, of Dallas, Texas, Regional Attorney for the Wage and Hour Division, U. S. Department of Labor, and Mr. Earl Street, of Dallas, Texas,

Attorneys for the Plaintiff. Mr. Eugene O. Monnet, of Tulsa, Oklahoma, Attorney for the Defendant.

The Court: Do you care to make a statement, Mr. Duke?

Mr. Duke: Yes, Your Honor. There has been prepared and approved by counsel a stipulation which I will ask to be filed and incorporated in the record in this case.
94 That stipulation, Your Honor, sets out with considerable particularity the operations of the defendant, and the various plans and methods of employment and payment of its employees that transpired since the effective date of the Act in October, 1938, and up to and including the present time, and I would like to summarize to Your Honor very briefly what is contained therein.

The Court: I would be glad if you would.

Mr. Duke: We have discussed it heretofore on the pretrial conference. The defendant is *admitedly* engaged in the production of oil for interstate commerce, and the commerce question is therefore out of this case, having been admitted. At the effective date of the Act, or just prior thereto, prior to October of 1938, the defendant then unquestionably in anticipation of the effectiveness of the Act prepared a form of endorsement and a stamp containing that form of endorsement to be stampted on its pay checks, Now that form of endorsement was used on checks for the payment of drilling employees, and I think it might be helpful to Your Honor if I read them to you. That applied to Rotary Drilling, Rotary Helpers or roughnecks, Cable Drillers, Tool Dressers, Roustabouts in Texas, Kansas, Oklahoma and Illinois; and Water pumpers. It provided, the endorsement provided for the payment of straight time for the first four hours in each eight hour tower, and time and a half for the next four hours, and setting up a base rate of pay, and admittedly that hourly rate of pay was such
95 a rate of pay that it resulted in the employee receiving the same rate of pay per tower or per day he had formerly received.

Then in October, 1939, the same endorsement was used. The only change was that the rate of payment of the watchmen, the base rate of pay per hour of the watchmen was raised from 25 to 30, with the additional provision that it included overtime after 42 hours, the first step down of the Act having occurred at that time from 44 to 42.

Then in September of 1940, for the first time, another form of contract was employed. It is found in the stipulation as Exhibit "C". That was a written contract, a printed form of contract, which was submitted to the employees, signed by them, and returned to the company. The method of endorsement theretofore being used being abandoned. In that contract some material changes occurred. Of course at that time we had gotten down to the 1940 hour period, and this was, of course, in contemplation of unquestionably that going into effect, of the 1940 minimum in the work week. Leasg pumpers are included for the first time, and this provision appears. You still go on with the four-four daily plan for employees on the drilling crews, but with reference to the lease pumper a five-five plan is originated and shows up for the first time. That is, they receive straight time for the first five hours work in each day, and time and a half for the next five hours work in each day, and a basic wage rate is set up, among others, for these pumpers in that contract.

Now this provision also appears for the first time. A guarantee wage as to lease pumpers, truck drivers
96 and swampers; a monthly salary appears opposite those three classifications; with the provision that if that monthly salary does not equal the same, or if the return from the hourly rate of pay does not equal the monthly salary that the employer will advance them the difference, and adjustments to be made on January first of each year, and when such employment ceases. It is our contention, of course, that that is in effect a guaranteed monthly salary.

Then the following year in 1941, and the date which we state in the stipulation to be July 16th of 1941, a new contract was entered into, and that contract did not include lease pumpers, a separate written contract being used for them. The same provision with reference to truck drivers and swampers, with a guarantee salary provision payment in there, and there is no change as to the drilling employees proper. That is contained on Exhibit "E". Then with reference to the lease pumper, a contract was simultaneously entered into as a separate printed form of contract which provided, stated this: I agree to work for so much a week, a stated sum being used, and stating that the basic rate of

pay would be that figure which would be determined by the hour in the algebraic formula "X", being the rate of pay per hour which when applied to straight time for the first 40 hours, and time and a half for the number of over-time work, would equal the agreed weekly salary. Now briefly Your Honor that is the position up to date.

The Court: What do you say the violation consisted of?

97 Mr. Duke: I say the violations consist of failure to pay over-time with reference to all of these employees to the date of this last contract, where, with reference to the drillers, the proper correction was made, and I omitted to tell Your Honor that. With reference to the drilling employees the contract shows they are properly compensated, and have been since July 16, 1941, but with reference to the other employees, the contained over-time is not being paid in accordance with the provisions of the Act, because they are not being paid time and a half. The truck drivers, swabbers and helpers are being paid a guaranteed monthly salary, with a fictitious hourly rate of pay. And we maintain that the same violation of the over-time provisions are still in existence up to today with reference to these lease pumpers. Whenever they work any over-time they are getting the same return each week regardless of the number of hours worked, and admittedly go under the terms of the contract, the weekly rate being fixed each week by the use of the algebraic formula.

The Court: Has the Circuit Court of Appeals passed on this?

Mr. Duke: Yes, it has been argued and I am looking for an opinion Monday. It was argued the first Monday in April. Now briefly that is our case, Your Honor.

The Court: Now the sum and substance of your complaint is that the defendant has entered into a contract with these employees which in effect set up fictitious hourly rates of pay, and guaranteed certain monthly or semi-monthly salaries?

98 Mr. Duke: Yes, sir.

The Court: That is just about the whole story.

Mr. Duke: Yes, sir. That would be true as to the pumpers also where the formula was used.

The Court: Do you think the position with their present contract is O. K.?

Mr. Duke: No, sir, the present contract with the pumpers I think is even more—

The Court: Now which class of employees?

Mr. Duke: I see what Your Honor means. We think that since the July 16, 1941, contracts were entered into that the contract with reference to the drillers is all right, but that the contracts with reference to the pumpers are even today fictional.

The Court: All right, do you care to make a statement before evidence is presented, Mr. Monnet?

Mr. Monnet: I will just make a brief statement more for the record. Of course the defendant is engaged in the principal business of drilling contractors. They are also oil producers, and we have stipulated that the oil which we produce does find its way into interstate commerce, probably every drop of it. We operated during the period over which this litigation is involved, we have operated 15 to 30 drilling crews, Rotary rigs which employ 18 men a day, and from 5 to 12 cable tools. Of course our business on the drilling end of it is mainly for hire to companies and individuals, and probably half of the wells we drill or
99 more, are dry holes. The others produce oil sold to pipe lines and goes to refineries and into interstate commerce.

Now when this Act was first passed a great many of the companies in our business didn't know and didn't pay any attention to it, but for some reason or other it came to our attention, and several weeks before it became effective the Board of Directors of the company went into conference of how to arrange our wage scale and so on to comply with the Act, and they conferred among themselves and with their counsel over a period of a couple of weeks, and finally worked out this form of check endorsement, which in the opinion of their counsel at the time, it was a brand new Act, nothing like it before, they thought was in compliance with the Act.

Of course in this particular type of business the wage scale is so high, it wasn't a question of complying with the

minimum wage scale, just a question of complying with Sections 6 and 7 of the Act, and doing it in such a way as not to hurt the men or the company. So this plan was suggested and approved by their attorneys, and was inaugurated, this check endorsement, which you might call the split day plan. In other words, the payment of over-time on a daily basis. And that continued until July 16, 1941, at which time it was changed to the present plan.

Now then with the exception of the pumpers, watchmen, and water pumpers from that time on the company has been using a plan which you might say is in compliance with the simplest construction you make of the Act.
100 In other words, the men got agreed stipulated pay for the first forty hours, and the time thereafter, with the exception of three classes of men, truck drivers, swabbers, and I believe the tandem truck drivers, these enormous trucks. The contract provides that they have base pay just like the others, but if their pay in any given month does not equal a certain stipulated sum, then the company may loan them the difference, and with the further provision that it is to be balanced out, taken out of future over-time, with an accounting had the first of each year, or when their employment ceases. Now that is a written contract signed by both parties, and the company is not bound to make a loan to them. Outside of that provision it is straight time of forty hours, and time and a half, except the pumpers. Of course there has been a problem in the oil industry how to handle the pumpers. That has been admitted by the administration. They have been as liberal as far as they could with the oil industry, and the contract which we made and are now operating under with these pumpers is based on our interpretation of the law as set out by the Fifth Circuit Court of Appeals in the Belo case. Of course that is before the Supreme Court of the United States now. From the interpretation of counsel for the defendant of that Belo case we made the contract along those lines in an effort to comply with the law.

Now it is our contention, of course, we don't think we violated the Act, but if we have violated it, it is in good faith, and the company was as careful as they knew
101 how to be in trying to comply with it right from its inception, and we have not acted in bad faith, and

they have done all that they could do, employed counsel and followed the advice of counsel. May be his advice is wrong, but at least I think we can clearly show they acted in good faith. Now then in July, but back further, before July—

The Court: What point do you make?

Mr. Monnet: I think that is an element in regard to the right to enjoin us from doing an act we are no longer doing. They are seeking to enjoin us from doing things we are no longer doing. Of course there are several instances they complain we are still violating the Act, in regard to the lease pumpers and the truck drivers. Now we changed these contracts in conformance with the agreement made between the drilling contractors of the Mid-Continent field and the Administrator back in July, 1941, I believe it was. We were one of the first companies, may be the first company to inaugurate the organization of the drilling contractors for the purpose of meeting with the Administrator, and after we met with him, that is us and the rest of the Association, because of the fact that the Administrator did not agree with our interpretation of the Act we voluntarily quit using the system we had been; and went to using the straight system; with the exception of the advance to those truck drivers, which I understand has been approved in one form or another where the Department considered it was a bona fide advance. Mr. Duke contends it is *fictitous* in our case. We contend it is not fictitious, and we are absolutely bound by the contract. The contract speaks for itself. If we over pay them they owe us, and if we under pay them we owe them. I believe that is all.

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The Court: Call your first witness.

Mr. Duke: Your Honor, may Mr. Street examine the witness?

The Court: Yes.

CLAUD BEATTY,

called as a witness on behalf of the plaintiff, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination.

By Mr. Street:

Q. State your name to the court, please, sir?
A. Claud Beatty.
Q. Where do you live, please sir?
A. I live at Maud, Oklahoma.
Q. By whom are you employed?
A. Helmerich & Payne, Inc.
Q. How long have you been employed by Helmerich & Payne?
A. Almost eight years.
Q. In what capacity are you employed at the present time?
A. Lease pumper.
Q. How long have you been employed as a lease pumper?
A. Since the 6th of March, this year.
103 Q. Prior to the 6th of March in what capacity were you?
A. I was a helper on a truck.
Q. That termed swamper?
A. Yes, sir.
Q. What does that mean?
A. That is the oil field name for a helper is all I know.
Q. What are the duties of a swamper or helper on a truck?
A. He assists in loading; just general hauling, he does the outside work while the driver works inside the cab.
Q. What do you mean by the outside work, loading and unloading the truck?
A. Loading the trucks. Most trucks are equipped with winches, and the swamper works on the outside and assists in the loading while the driver works inside.
Q. Does the swamper do any relief driving?
A. Yes, sir.
Q. That is among his duties?
A. Well, it isn't compulsory, but they do.
Q. How long did you serve as a swamper or truck driver's helper?

A. Well, from about July of 1939 until the 7th of December, 1941.

Q. During the period of time when you were employed as a swamper did you work here in the State of Oklahoma?

A. In the *Dtate* of Oklahoma and adjoining States.

Q. Now just what did your duties require you to do: I mean, what did you haul and where did you haul it?

104 A. We hauled that oil field equipment, just general oil field equipment, pipe, cable machines, rigs, just all oil field equipment.

Q. Was that for Helmerick & Payne exclusively?

A. Yes, sir.

Q. Was the equipment that you hauled used in the drilling of wells, or for the production of oil after the wells were drilled, or both?

A. Both.

Q. For both purposes?

A. Yes, sir.

Q. I believe you mentioned that you hauled pipe among other things?

A. Yes, sir.

Q. And did you haul machinery of various kinds?

A. Yes, sir.

Q. Pipe and machinery both for the drilling of wells and for the production of oil?

Q. That is right.

Q. Was all of the hauling within the State of Oklahoma?

A. No, sir.

Q. Where else did you haul?

A. We hauled to Kansas, Texas, and made about three trips into Alabama.

Q. Now did you go outside the State of Oklahoma every week?

A. Well, no, sir, not necessarily. Just whenever a load or trip came up we took it out. There would be weeks we wouldn't go, and then go three or four loads in one week.

Q. What are the facts as to the *comparatice* num-

105 ber of weeks on which you did haul something to other States and those in which you did not?

A. Well, that would be hard to say off hand. We did more hauling in the State than we did out of the Stafe.

Q. In other words, I understand you to mean most of the

weeks you did not haul anything across any State lines, is that correct?

A. Yes, sir.

Q. Now while you were serving as a swamper what was the basis on which you were paid for your services?

A. Well, when I first went to work on the truck, I had been a roustabout, I worked awhile on the truck at roustabout pay, and then they paid me at $150.00 a month.

Q. Now when did that happen?

A. That was in 1939.

Q. Do you remember what part of 1939?

A. I am not positive, but I believe I went to work on the truck, started in July of 1939.

Q. And you were paid straight $150.00 a month?

A. Yes, sir, soon after I went to work on the truck.

Q. How long did that continue?

A. Well, until about September of 1941.

Q. About September of 1941?

A. I think it was about that time.

Q. Did you enter into one, sign one of these contracts signed by various employees?

106 A. Yes, sir, I have signed three of them.

Q. After you signed this, the first contract, back in 1939, did I understand that you continued to draw straight $150.00 a month?

A. Yes, sir.

Q. Now during that period of time did you or not work more than, during the year 1939 did you work more than, the latter part of the year 1939, more than 42 hours a week?

A. Well, as a general rule, yes.

Q. What were your regular hours?

A. Well, we had no regular hours.

Q. Well, what hours did you actually work?

A. I worked the hours the job we had on hand required to complete. That is any job that had to be done at that time, we went ahead and completed that job.

Q. Now as a general proposition did you work more than 42 hours per week at that time?

A. Well, yes, we worked more than 42 hours a week.

Q. About how many hours did you work?

A. It all depended on the job. There would be days when we had a short job and not work over four or five

hours, and then another day a long haul, we would drive ten or twelve or may be fourteen hours.

Q. Well, what would you say as a regular thing the average number of hours per week you worked?

A. Well, I couldn't say, because it varies *do.* I don't know as I could average the hours.

107 Q. Would you give us some kind of an estimate about it?

The Court: He says he cannot.

Q. Of course you made records, did you, of the hours you worked, turned in a time report?

A. Yes, sir, there is a record of it. I don't have the record but the boy I worked with has a truck report that he has kept of the hours we put in on the truck.

Q. Now coming down to the time you went to work as a pumper, which I believe you stated was in March, 1942?

A. Yes, sir.

Q. What lease do you work on?

A. I work on School Land-Saban, south of Moore.

Q. What are your duties as a pumper?

A. Just maintenance of the lease, keeping it up, and the running of the wells, and trying to get production.

Q. You mean you pump the oil out of the wells?

A. Out of the wells.

Q. How many hours per day do you work?

A. Well, it varies too. I never work less than nine hours a day, and from nine on up.

Q. Is that true up to the present time?

A. Yes, sir.

Q. And how many days per week do you work?

A. Seven days per week.

Q. When you went to work as a pumper, did you sign a new kind of contract?

108 A. Yes, sir, I signed one.

Q. And what is your compensation under that contract?

A. Well, I signed a contract for $33.16 a week, less house rent.

Q. And you drew that, is that the amount that you actually drew each week?

A. Well, considering the house rent, yes, sir.

Q. The house rent is deducted?

A. Yes, sir.

Q. How much is the house rent?

A. It is $8.00 a month.

Q. As I understand you then your wages remained the same each week regardless of the hours that you worked?

A. Yes, sir.

Q. Do you recall the provisions of that contract you entered into, Mr. Beatty?

A. Well, only partially. I couldn't interpret it myself.

Q. Was that the contract that had the "X's" in it?

A. It was a little deep for me, as far as interpreting the contract. As far as my knowledge of what the contract consisted of I am not capable of reading it and determining what it meant. I couldn't do it.

Q. Did you understand you were to be paid the same amount each week?

A. Yes sir, and according to the way I understood it, according to the base pay and all, I couldn't or haven't worked enough hours to make the pay I received; that is under the base pay.

109 Q. You haven't worked enough hours?

A. No, it calls for about, as near as I can figure, whether it is correct or not, but the way I figure it a little in excess of twelve hours a day, and I won't average that many hours.

Q. But you are still being paid at the same rate?

A. Yes, sir.

Mr. Street: That is all.

Cross Examination.

By Mr. Monnet:

Q. You read the contract before you signed it?

A. Yes, sir, I read it.

Q. It is a little hard for you to understand that "X" business, wasn't it?

A. Yes, sir.

The Court: You are not the only one that is having trouble with that "X" business.

Q. But you did understand this pay you were getting was to include your regular time and time and a half together?

A. Yes, sir.

Q. As long as that exceeded thirty cents an hour minimum, you understand that?

A. Yes, sir.

Mr. Monnet: That is all.

Re-direct Examination.

110 By Mr. Street:

Q. Do you turn in hours worked each week as pumper?

A. I turn in eight hours a day.

Q. Each day?

A. Yes, sir.

Q. How does it happen you turn it in that way?

A. Well, I don't work enough hours to make up the difference in my pay, so I turn in eight hours a day, and it is the same anyway. Unless I average more than twelve hours a day I won't draw the pay that I receive, that is according to the base pay and over-time pay, I won't make the money that is paid.

Mr. Street: That is all.

The Court: You turn in the record showing you work eight hours each day regardless of the number of hours you work?

A. That is right.

The Court: Have you been instructed to set out accurately the number of hours you actually work each day?

A. No.

The Court: Have you been given any instructions about that at all?

A. Well, not that I recall, no sir. They made out a form and delivered us, and told me I was to work eight hours a day, then they made us a form out.

The Court: Told you that you were to work eight hours?

A. Yes, sir.

111 The Court: Was that regardless of the number of hours that might be necessary for the particular job on this lease?

A. Well, they never said. I supposed I am responsible for the job.

The Court: You were there to do a certain job, and you do it?

A. Yes, sir.

The Court: You understood you were expected to do that job in eight hours?

A. Yes, sir.

The Court: So you just turned in eight hours each day?

A. Yes, sir, I turned in eight hours.

The Court: Anything further?

Mr. Monnet: Yes, sir.

Re-cross Examination.

By Mr. Monnet:

Q. You say you were instructed just to work eight hours a day?

A. Well, yes, I guess that I was, because that was the time I was to turn in.

Q. Now has anybody told you to just report eight hours a day?

A. Not that I recall, no, only on the form I was given, and I think they were sent out of the office on the day to file your time; it was that way and we followed the form.

Q. The form you were given to report on, you had to fill in the number of hours each day?

A. Yes, sir, there is a place for the hours.

412 Q. If you worked five hours, or ten, or twelve, it didn't make any difference up to twelve hours a day, your pay would be the same?

A. It would be the same, yes sir.

Q. It wouldn't make any difference whether you worked five hours a day or ten or twelve?

A. No, that wouldn't make any difference.

Q. And your explanation of putting in the eight, your hours varied so you put down eight?

A. I put down eight.

Q. But no one has ever told you?

A. Not that I have been told to write it up as eight.

Q. Not to show an inaccurate statement of the hours?

A. No, sir.

Mr. Monnet: That is all.

HAROLD D. GRIFFIN,

called as a witness on behalf of the plaintiff, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination.

By Mr. Duke:

Q. State your name to the court, please?

A. Harold D. Griffin.

Q. Mr. Griffin, you are employed by Helmerich & Payne, Inc.; are you not?

113 A. Yes, sir.

Q. Are you an officer of the corporation?

A. Yes, sir.

Q. What position to you hold?

A. Title, Vice President and Secretary.

Q. How long have you been so employed?

A. Since March 6, 1935.

Q. You are familiar then, are you not, with the wage practices that were instituted by Helmerich & Payne, Inc., the defendant here, beginning in October, 1938?

A. I have gone into it thoroughly on different occasions, although I don't work on it directly.

Q. Are you a member of the Executive Committee of the corporation?

A. I would say so, yes.

Q. Calling your attention for the moment to the contract entered into between the company and its employees in September, in July, 1941, and which has been marked Exhibit "E" in the stipulation that has been filed in this case, will you look at that, please sir. Do you see the provision in that contract where the payment of a guarantee wage to truck drivers, swampers, and tandem truck drivers?

A. No, I don't see the terms as a guarantee.

Q. Are you looking at paragraph 2?

A. Yes.

Q. Where it is provided in the event the hours worked on the plan does not equal a certain amount they will be advanced the difference to make up to the agreed

114 amount?

A. That is right.

Q. Have you ever required the repayment of any advance to any of those employees?

A. No, it has never been required.

Q. The same provision with reference to any of the classes of employees where that provision occurred in any of the contracts you have entered into, have you ever required the repayment of such advance or loans?

A. No, we have not. We got into some difficulty on that.

Q. Mr. Griffin, this contract, it has been stipulated here that it was entered into on July 16, 1941, the latest contract, is that date correct? The exhibit I show you bears the date of September, 1941, does it not?

A. State the question again, please.

Q. That agreement, the one I show you, bears the date of September, 1941, does it not?

A. That is right.

Q. Was it really entered into then or made retroactive to July 16, 1941?

A. The contract was effective July 16, 1941, and was a printed form, and then was signed up by the employees as of the date of their subsequent employment, or that they signed it. It was retroactive to July 16, 1941, I believe. Now I am not positive about that.

Q. I understand you then that some of these contracts at any rate were actually signed subsequent to July

115 16th?

A. Certainly.

Q. Was any payment of money made to any of these employees between the time this contract went into effect and back to July 16, 1941?

A. That question is not quite clear.

Q. Well, did you do this: It seems apparent here from your testimony that some of these contracts at any rate were not signed up by the employees until after July 16, 1941. Did you pay those men upon signing these contracts, did you pay them any difference in wages due them for

the period between July 16, 1941, and the date they signed the contract?

A. My recollection is that they were being paid under the terms of that contract from July 16, 1941, regardless of when they signed the contract. That is my recollection.

Q. Hadn't they in the meantime, hadn't you continued to pay them for some period of time after July 16th under the old contract, and then when they signed this you made up the difference back to July 16th, isn't that true?

A. That is right, yes.

Q. Were there many of them effected?

A. Yes, quite a few, quite a few.

Q. Do you recall the total amount that you paid back?

A. No, I don't recall off hand.

Q. Could you estimate it?

A. No, I couldn't. I would have to go to the records for that.

116 Q. Now I show you what has been marked for identification Plaintiff's Exhibit No. 1, and I will ask you to read that, please sir?

A. I believe I have it.

Q. This is a copy of a letter addressed to G. C. Street, Regional Director of the Wage and Hour Division, Dallas, signed by Settle, *Monett* & Clammer, by Eugene O. Monnet. Is Mr. Monnet an officer of Helmerich & Payne?

A. No, he isn't an officer of Helmerich & Payne. He is attorney for the company.

Q. Is he a member of the Board of Directors of that company? Does he have any official connection with the company?

A. No, not with Helmerich & Payne.

Mr. Duke: I offer the copy as Plaintiff's Exhibit No. 1.

Mr. Monnet: We have no objection.

Q. Admittedly then, you say you knew of this letter, you have seen it before this time?

A. I believe so, yes; it looks familiar.

Q. Does that express your conception of the purposes of the defendant in arriving at these various plans?

A. Yes, sir.

Q. Now a moment ago when we were speaking of the retroactive effect of those last contracts when you stated

that you paid certain amounts of money wherever due from July 16th up to the time when the practice was put into effect, did that apply also to drillers, as well as other classes of employees?

A. I am positive that that applied to all classes of labor.

Mr. Duke: That is all.

Cross Examination.

117 By Mr. Monnet:

Q. This contract that Mr. Duke spoke to you about, Exhibit "E", you will recall had this provision at the time: "It is understood that this agreement shall be effective as to present employees executing the same as of and from July 16, 1941." You recall that provision?

A. Yes, sir, I recall it.

Q. Now then practically all of those contracts, I expect all of them, were signed after July 16, 1944, were they not?

A. Yes, sir.

Q. As a matter of fact they had to be reprinted and were not ready to sign until after July 16th?

A. That is right.

Q. But they were to be effective as of that date on account of the agreement made with the Administrator of the Wage and Hour Division?

A. Yes, sir.

Q. And as to all your old employees that signed that contract, your office spent several months in going back in the spare time and checking up the pay they received under the old contract, and bring it up and giving them an additional amount they were entitled to under this new contract?

A. Yes, sir, considerable amount of work.

Q. As a matter of fact it took you several months to go back and check that up and send them additional amounts?

A. Yes, sir.

118 Q. So far as you know every one entitled to the difference were checked up, the amounts figured, and they were paid that money, is that right?

A. Yes, sir.

Q. Now Mr. Griffin, you are a director of Helmerich & Payne, the *Delaware* corporation, that is the present operating corporation?

A. Yes, sir.

Q. And you are also a member of the Board of Directors of Helmerich & Payne, the Oklahoma corporation, which was merged into the *Delaware* corporation in 1940?

A. Yes, sir.

Q. And you were a director of the old company when this law went into effect?

A. Yes, sir.

Q. Did you ever attend any meeting of the Board of Directors discussing the plans about following the provisions of this law before it became effective?

A. I am sure I attended every one of them. I attended a considerable number.

Q. Besides having the official position you have, you are the Chief Auditor of the company, are you not?

A. Yes, sir.

Q. And have been since you have been connected with it?

A. Yes, sir.

Q. Now were these various plans for complying
119 with the wage and hour law promulgated by Helmerich & Payne since October, 1938, were they worked out with the advice of counsel, and after a great deal of conferring among the directors?

A. Considerable amount of thought given to the preparation of those contracts, and they were in accordance with the advice of counsel.

Q. And did the Board of Directors have advice of their counsel that in his opinion they complied with the wage and hour law?

A. Yes, sir, and they were studied by all of the directors of the company.

Mr. Monnet: That is all.

Re-direct Examination.

By Mr. Duke:

Q. Now Mr. Griffin, as Mr. Monnet brought out, there was considerable time necessary following July 16, 1941, when the new contracts were entered into, there was considerable time taken up with preparation of the figures that you made for computing amounts due the employees under the new contracts, to make up the difference, that is correct, isn't it?

A. Yes, sir.

Q. Now as a matter of fact no additional amounts were paid any employee except drilling employees were paid? No pumpers were paid any additional amounts, no production employees out on the leases?

120 A. The employees covered by the new contract, their pay was recalculated and they were paid additional amounts.

Q. Aren't you *speak* through only of the drilling employees? I will put it this way: Were the pumpers on the leases paid anything additional at any time?

A. I would say no. I would have to check that, but I would say no.

Mr. Duke: That is all.

(Witness excused.)

The Court: Call your next witness.

Mr. Duke: I think that is sufficient with what is in the stipulation, Your Honor. The plaintiff rests.

W. H. HELMERICH,

called as a witness on behalf of the defendant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination.

By Mr. Monnet:

Q. State your name, please?
A. W. H. Helmerich.
Q. Where do you live?
A. Tulsa, Oklahoma.
Q. Are you connected with Helmerich & Payne?
A. I am.
Q. Defendant in this action?
121 A. Yes, sir.
Q. What is your position with the company?
A. I am President.
Q. You also were President of Helmerich & Payne, the Oklahoma corporation, which was merged into the present *Delaware* corporation in February, 1940?
A. I was.

Q. In fact you have been President of both companies since their inception?

A. Yes, sir.

Q. And of course a member of the Board of Directors?

A. Yes, sir.

Q. Mr. Helmerich, do you recall back in September and August, 1938, whether the Board of Directors of Helmerich & Payne ever discussed the question of interpreting the meaning of the wage and hour law, and working out a plan for paying wages in conformity with the law?

A. We spent many hours on it.

Q. Do you remember the effective date of the Act?

A. No, I don't remember the effective date of the Act, but I remember this, that we had discussions some two to three months prior to it, because whatever we decided to do we wanted to do it prior to the day that the Act went into effect.

Q. Now then did you employ counsel to advise you with regard to the interpretation of the Act?

A. Yes, sir.

Q. And did you form a plan by which you set out
122 a wage scale to, as you thought, conform with the Act?

A. We did. We worked a plan that we were confident complied with the Act.

Q. And was that plan suggested or recommended by your counsel as being in compliance with the Act in his opinion?

A. Well, it was practically his plan.

Q. Now then you, of course, are familiar with the various wage plans the company has *inaugerated* since the wage and hour Act went into effect?

A. Yes, sir.

Q. Were all those various plans made with the approval and upon the recommendation of your counsel as being in compliance with the Act?

A. That is right. What we attempted to do was to give our counsel our problem and have him work out a contract that would comply with the Act, and when that was done we accepted it.

Mr. Monnet: That is all.

Cross Examination.

By Mr. Duke:

Q. Mr. Helmerich, it is true, isn't it, that when this plan was worked out and put into effect, it resulted in no change whatever in the employment conditions of your employees, either as to wages received or hours worked? That is true, isn't it?

123 A. Let me put it this way. It kept us from making a wage cut that were necessary for us to make if we hadn't adopted this plan.

Q. Wasn't your purpose to accomplish just what I have said, that you would make no changes, keep the same men?

A. Our attitude was this; we would continue on with our present wage scale for the two or three intervening months, rather than to cut them, and then put them back when this law went into effect. We were faced with the condition we couldn't continue on the rate of pay, especially in Illinois, rather than cut them and bill them back when this law went into effect when our competitors would also have to meet it.

Q. Yours is a competitive business, is it not Mr. Helmerich?

A. Yes, sir, it is.

Q. And there were established wage rates in the industry, were they not?

A. No set rates. They varied as much as 15 to 20 per cent.

Q. In the same field?

A. In the same field, yes, sir.

Q. You say then that your purpose in adopting this plan was to keep from reducing the hours of labor of the employees?

A. No, I don't think so. I say the purpose of not decreasing the wages some three or four months prior to the time this went into effect.

Q. You did decrease the hourly wage, didn't you?

A. When?

Q. Well, if you took a man—

The Court: That is argumentative.

124 A. If this law had not been going into effect when it was, I think it was in the fall of the year, we would

have lowered the wage scale in the summer of that same year.

Q. If it hadn't gone into effect?

A. If we hadn't anticipated it going into effect in the fall, and rather than make two changes we decided to go on with our wage scale until this law went into effect.

Q. In any event it is generally true, is it not, if conditions remained as they had been, the men continued to work approximately the same hours and received the same pay?

A. Yes, sir, that is right.

Mr. Duke: That is all.

(Witness excused.)

The Court: Call your next witness.

Mr. Monnet: We rest.

The Court: I will tell you what I think you had better do in this case. It occurs to me that the Belo case now before the Supreme Court will be controlling as to whether the defendant company has violated this Act. The plan adopted by the defendant company, the contracts entered into with its employees, is essentially the same as the plan used by the Belo Company. Of course this first contract presents a little different situation, but I think the net result is the same. So I don't think this case should be decided until the Supreme Court passes on that case. You say it has been argued. Certainly the opinion in
125 that case should point the way. I believe I will ask you to submit a memorandum brief in this case after the Belo case comes down, Mr. Duke.

Mr. Duke: Yes, sir.

The Court: Serve it on Mr. Monnet, and then he can file a response, and then I will set the case for decision, and if necessary hear arguments at that time. Very likely won't be necessary to hear them. Do you think that is the way to handle it?

Mr. Duke: Yes, sir, I think that is all right.

Mr. Monnet: We have been discussing that, and we don't know what the Supreme Court will hold in this Belo case.

Plaintiff's Exhibit No. 1.

August 15, 1940

Re: Helmerich & Payne, Inc.—Drilling Contractors, 415 Philtower, Tulsa, Oklahoma.

Honorable G. C. Street, Regional Director of the Wage and Hour Division, Department of Labor, Dallas, Texas.

Attention: Mr. J. F. Crow

126 Dear Sir: About two weeks before the Fair Labor Standards Act went into effect, the above named company put into effect a wage scale as shown by the enclosed form. Mr. Crow has asked us to write you explaining how this scale was worked out.

As you perhaps already know, the drilling contracting business pays quite high wages and employee's pay is based upon what is called an 8 hour tour or period of work. Drilling tools must be worked 24 hours a day and each day is divided into three tours of 8 hours each and the men are normally employed to work one tour of each day. The following is a brief schedule of wages paid per 8 hour tour to the following classes of employees in this business:

Rotary Drillers	$11.00
Rotary Helpers or roughnecks	7.00
Cable Drillers	10.00
Tool Dressers	8.00
Roustabouts (in Texas and Kans.)	4.80
" " Okla. and Ill.)	5.00
Water pumpers	4.50

127 You can readily see that the wages paid to the employees of this company were proportionately so far in excess of the minimum required by the Fair Labor Standards Act that the company's problem in complying with the Act was not the amount of its wage scale but more the method in which the wage scale was determined. Before the act went into effect, wages were paid more upon the basis of a day's work done than upon actual hourly labor performed, it being the custom of this business that, when a driller commenced work on an 8 hour tour, he was considered for payroll purposes to have worked 8 hours whether he actually did so or not, although in most in-

stances a full 8 hours work was performed. Under the provisions of the new act, it became necessary to base our wages upon an hourly basis.

The conditions surrounding the drilling contracting business were such that it would have been impractical to have divided a working day into four 6 hour tours instead of three 8 hour shifts or tours. Furthermore, competent and experienced drillers and driller's helpers could not be employed on the basis of a 6 hour day and they wouldn't take the cut in pay which would be necessitated by shortening their daily hours of work. It, therefore, became necessary to work out an hourly wage scale which would, for instance, pay a rotary driller for 8 hours work the total sum of, $11. This was done by entering into employment agreements with our men by which the first 4 hours of each 8 hour tour would be paid for at the regular hourly rate and the next 4 at time and a half. This was determined by using the algebraic formula 40 x equals the daily wage, X being the regular
128 hourly rate; consequently, a driller who would work 8 hours for $11 would work at a regular hourly rate of $1.10; his first 4 hours in each 8 hour tour pays him $4.40 and his next 4 hours at time and a half would pay $6.60, or a total of $11. In this manner the regular hourly rate of the men connected with the drilling contracting business was determined, they were so notified, agreed to that basis of payment and have since that date been paid at that rate.

This schedule was worked out about two weeks before the law went into effect. It was passed upon and approved by the executive board of the company. Roustabouts were to be paid a regular hourly rate of 48c and the schedule was delivered to the auditing department with instructions to comply therewith. Notice was sent to all of the foremen in the field with instructions to notify the men of the change in wage scale. Also, a rubber stamp was made, an imprint of which is herein attached, which was stamped upon the backs of the wage checks over the place for the employees endorsement thereon. However, roustabouts in Oklahoma and Illinois were being paid $5.00 per day or 8 hour tour, which made their regular hourly wage rate 50c per hour. Due to the fact that roustabouts in Texas and Kansas received only $4.80 per day for an 8 hour day or tour, or a

regular rate of 48c per hour, the wage scale of the roustabouts in Oklahoma and Illinois, which was 50c per hour, amounting to $5 per day, was not put on the rubber stamp as it might have caused dissatisfaction among this class of employees. It was very rarely that a roustabout would work more than an 8 hour tour and, consequently,
129 the bookkeeping department in making the wage checks fell into the erroneous habit of figuring the checks on the basis of $5.00 for an 8 hour day, without taking into consideration the manner in which this wage should be computed; consequently, in a few instances where roustabouts in Oklahoma and Illinois did work 10 hours instead of eight the men in the auditing department making up the payrolls, in several instances, paid these men on a basis of 62½c per hour rather than the agreed and authorized regular wage scale. Under the regular wage schedule, a roustabout would receive $6.00 for 10 hours work, but under the way it was so erroneously figured a few times by the auditing department, they were paid $6.25. In going over the books of the company, your Mr. Crow noted this discrepancy in several instances and asked for an explanation thereof, which is above stated.

If there is any further information you desire from us in regard to determining and paying the wages of our employees, we will attempt to promptly answer the same.

Yours very truly,

SETTLE, MONNET & CLAMMER,
By EUGENE O. MONNET.

EOM:K

United States of America, Northern District of Oklahoma, ss.

130 I, Geo. H. Lessley, do hereby certify that I am the Official Court Reporter for the United States District Court for the Northern District of Oklahoma, and as such Court Reporter I made a full, true and correct stenographic report of the proceedings had on the hearing of the above entitled and numbered cause, L. Metcalf, Administrator of the Wage and Hour Division U. S. Department of Labor, Plaintiff, vs. Helmerich & Payne, Inc., a corporation, Defendant, No. 568 Civil on the dockets of said court, and that the above and foregoing pages numbered 1 to 37, both,

inclusive, is a full, true and correct transcript of said proceedings.

Dated at Tulsa, Oklahoma, February 9, 1943.

GEO H. LESSLEY, Court Reporter.

Filed: February 13, 1943. H. P. Warfield, Clerk, U. S. District Court.

[Clerk's Certificate.]

United States of America, Northern District of Oklahoma, ss.

149 I, H. P. Warfield, Clerk of the United States District Court for the Northern District of Oklahoma, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record in the case of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff, vs. Helmerich & *Payne*, Inc., Defendant, Civil Action No. 568, as designated by counsel and as required under Paragraph G of the Rules of Civil Procedure to be prepared and certified as the same appears from the records in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court at my office in Tulsa, this 24th day of February, A. D. 1943.

H. P. WARFIELD, Clerk.

(Seal) By M. M. EWING, Deputy Clerk.

Filed February 26, 1943. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit:

Order of submission

Second day, September Term, Wednesday, September 8th A. D. 1943. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton, and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard and was argued by counsel, George B. Searls, Esquire, and Morton Liftin, Esquire, appearing for appellant, Eugene O. Monnet, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

Opinion

[November 15, 1943]

George B. Searls and Morton Liftin (Irving J. Levy, Acting Solicitor, Bessie Margolin, Assistant Solicitor, and Llewellyn B. Duke, Regional Attorney, were with them on the brief) for Appellant.

Eugene O. Monnet (Frank Settle and Sam Clammer were with him on the brief) for Appellee.

Before PHILLIPS, BRATTON, and HUXMAN, Circuit Judges.

BRATTON, Circuit Judge:

The Administrator of the Wage and Hour Division of the Department of Labor instituted this action against Helmerich & Payne, Inc., to enjoin alleged violations of the Fair Labor Standards Act, 52 Stat. 1060. The company is engaged in the business of drilling oil and gas wells, some for itself and some for others, and in the production of oil and gas; and in the furtherance of its activities, it had during the times in question an average of approximately 400 employees, of whom about 305 were engaged in drilling operations, about 70 in the operation of leases, and about 25 in clerical positions. The court granted the injunction in part as sought, but denied it in respect to employment under and in accordance with three types of contracts being used; and the Administrator appealed.

One type of these contracts is referred to as the split-day plan. It provides for fixed regular hourly rates of pay for the several classifications, all in excess of the minimum contained in the act; provides that the regular rate per hour of employees within certain classifications shall be paid for the first four hours in an eight-hour

tour, and that hours worked in excess of the first four shall be paid for at one and one-half times the regular rate; provides that employees in another classification shall be paid the regular rate for the first five hours in each ten-hour tour, and that the hours worked in excess of the first five shall be paid for at one and one-half times the regular rate; provides that the employees in other classifications shall be paid the regular rate per hour for the first five hours in a twelve-hour tour, and that hours worked in excess of five shall be paid for at one and one-half times the regular rate; provides that the regular rate shall never apply to more than forty hours in any workweek—that being the maximum provided in the act at the time of the execution of the contracts; and provides that in the event the monthly compensation of employees coming within certain groups shall not equal certain respective sums, the company will advance the difference which shall apply on future overtime payments, and that adjustments shall be made on January first of each year, and when the employment ceases. The second type of the contracts in question is called the advance-plan contract. It likewise provides for fixed regular rates for the several classifications, all in excess of the minimum fixed by the statute; provides that such regular rates shall be paid for the first forty hours worked in any week, and that the hours worked in excess of forty shall be paid for at one and one-half times the regular rate; and provides that in the event compensation of employees within certain classifications shall not equal certain specified sums, the company may advance and loan the difference, which shall apply on future overtime payments, adjustments and accounting to be made on January first, or when the employment ceases. No advances or loans were ever made under either of the two types of contract.

Both types of contracts are attacked on the ground that they are not actual, bona fide agreements of employment, entered into in good faith, with regular and overtime rates of pay, within the meaning of the act; but provide fictitious and unreal rates used solely for the purpose of compensating the employees in the same amounts as they were paid before the act went into effect. The company concedes that the real purpose in entering into the contracts was to continue paying the employees the same amounts per week in the aggregate as they had been paid before the act became effective, and at the same time to comply with the act. Of course, a contract which capriciously provides for fictitious and unreal rates bearing no relation to the wages paid does not comply with the act. But a contract understandingly entered into in good

faith, providing in a bona fide sense for regular and overtime rates per hour which conform to the provisions of the act, is effective, even though one of the intents and purposes is to continue to compensate the employee in the same amount per week in the aggregate as he had received before the act went into effect (Walling v. A. H. Belo Corp., 316 U. S. 624). These contracts were actually entered into; there is no suggestion that the parties failed to understand them; there is no showing that the employees were overreached; and there is nothing in the record to indicate that any other element of fraud attended their execution. They expressly provide in clear and explicit language for regular rates per hour which exceed the minimum rates provided in the act, provide that such rates shall be paid for regular hours which do not exceed the maximum provided in the act, and provide for overtime at one and one-half times the regular rates for all excess time worked. The company and its employees mutually entered into the respective arrangements, and they do not contravene the exactions of the act (Walling v. A. H. Belo Corp., supra).

Emphasis is placed upon the provision in one type of the contracts for advances to certain employees and the provision in the other type for loans to certain employees. But, as already said, each type provides for regular pay and overtime pay in amounts which meet the requirements of the act. Having done that, in provision in one for advances and in the other for loans over and above such pay does not render the contracts objectionable, within the purview of the act (Walling v. A. H. Belo Corp., supra).

The third type of contract challenged is referred to as the X formula contract. Exhibit I in the record is typical. It provides for a specified sum per week, payable bi-weekly; provides that the pay shall not be less than thirty cents per hour for the first forty hours and forty-five cents per hour thereafter in each week; provides that the pay received shall cover and include regular time and overtime; provides that the regular hourly rate per each week shall be determined by the following formula, "Let X equal my regular or base hourly wage for each workweek. X shall then be determined by multiplying X by the number of hours in each week which I work up to the first 40 and adding to it the number of hours worked in said workweek in excess of said 40 hours times 3X 2, which shall equal the compensation I receive for that week"; and provides that in the event the weekly regular hourly wage, determined in accord-

ance with the formula, shall in any week equal less than thirty cents per hour, thirty cents per hour shall be the regular hourly wage for the first forty hours worked in that week, and forty-five cents per hour shall be the overtime wage for the additional hours worked. In Overnight Motor Co. v. Missel, 316 U. S. 572, the employee received a fixed weekly salary before the act became effective and a slightly larger salary thereafter. Nothing above the weekly wage was paid, because the maximum workweeks, computed at the statutory minimum rates with time and a half for overtime would not require any sum above the weekly wage. In other words, the wage paid was sufficient in amount to cover the statutory minimum base pay for the statutory maximum regular hours and fifty percent additional for the additional hours actualy worked. But there was no contractual limit upon the hours which the employer could have required the employee to work for the agreed wage. Neither was there any provision for additional pay in the event the hours worked required minimum compensation in excess of the fixed wage. The court said that the contract was deficient in complying with the law. Here, this type of contract does not fix in terms of dollars and cents any regular rate or overtime rate of wage. Until the work has been done and the end of the week arrives, neither the employer nor the employee knows the regular or overtime rate. Until then both parties are in the dark as to such rates. And then the regular rate is automatically determined by application of the formula, so that the regular rate for the first forty hours and one and one-half times that rate for the overtime shall equal the stipulated weekly wage. The formula serves only as a means of arriving at a figure for the regular rate which, together with the overtime rate, represents the weekly wage. And in practical reality there is no contractual limit on the hours the company may require an employee to work for that amount, if it sees fit to do so. Subject only to the exception that the employee must receive not less than thirty cents per hour for the first forty hours in each workweek and forty-five cents per hour thereafter for overtime, he receives the same wage regardless of the number of hours he is required to work. The only difference is that by application of the formula, as the number of hours increases the regular rate per hour is decreased. But in the end, the employee receives in lump sum the weekly wage. While the contract does provide for a regular wage of not less than thirty cents per hour and overtime of not less than forty-five cents per hour, that provision has no practical operative effect

whatever because in order to earn more than the stipulated weekly wage the employee would be obliged to work unreasonably long hours—far in excess of the hours which the parties could reasonably have contemplated. A contract of this kind fails to meet the requirements of the act (Overnight Motor Co. v. Missel, supra).

The judgment is modified by including within its injunctive provisions a provision restraining the company from the further production of goods for commerce through the use of employees under contracts of which Exhibit I is typical, and as modified it is affirmed.

Judgment

Thirtieth Day, September Term, Monday, November 15th A. D. 1943. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton, and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby modified by including within its injunctive provisions a provision restraining the company from the further production of goods for commerce through the use of employees under contracts of which Exhibit I is typical, and as so modified, be and the same is hereby affirmed.

On December 21, 1943, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.

Clerk's certificate

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify the foregoing as a full, true, and complete copy of the transcript of the record from the District Court of the United States for the Northern District of Oklahoma, and full, true, and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit

Court of Appeals, No. 2704, wherein L. Metcalfe Walling, Administrator of the Wage and Hour Division of the United States Department of Labor, was appellant, and Helmerich & Payne, Inc., was appellee, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 5th day of February A. D. 1944.

ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

[SEAL]

By GEORGE A. PEASE,
Deputy Clerk.

U. S. GOVERNMENT PRINTING OFFICE 1944

Supreme Court of the United States

Order allowing certiorari

Filed March 27, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, limited to the first question presented by the petition and the case is transferred to the summary docket. Counsel are requested to discuss in their briefs and on oral argument the question whether the case is moot.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.